

THE TRIAL.

OF

MAHARAJA NANDA KUMAR,

A

NARRATIVE OF A JUDICIAL MURDER.

BY H. BEVERIDGE,

Bengal Civil Service.

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I DEDICATE THIS BOOK

TO

MY WIFE,

WHO HAS TAKEN SO MUCH INTEREST IN THE ATTEMPT TO VINDICATE
THE REPUTATION OF

A PERSECUTED BENGALI.

P R E F A C E.

THIS book is mainly a reprint of two articles in the *Calcutta Review* of this year, but I have altered the arrangement, and I have made a good many additions and omissions. I have also made much use of the invaluable documents recently discovered in the High Court Record-room. I am not able to make the account of the Trial easy reading, and it is by lawyers and students of history that I wish to be judged. I confess that when I first received Sir J. Stephen's book, I was a good deal discouraged, and almost dismayed. I saw that I had made some mistakes in my former writings on the subject (though really that about the karárnáma was the only one which affected my argument), and I felt that it would be perilous to enter the lists against one so able and so famed as Sir J. Stephen. I had been a great admirer of Sir James's legal work in India, and I felt it rather cruel that he should imply that I knew nothing about English law, for I had been a diligent student of his own works, and thought I had learned something from them.

My discouragement, however, was removed when I found that Sir J. Stephen had evidently taken up the subject hastily, and had written his book in a hurry. I think the first ray of hope came from the discovery that he was wrong about the date of the capture of

Rohtas, and then I found that he did not quote the provision of Bolaqi's will about Padma Mohan correctly, or notice the expression on the jewels-bond that the jewels were deposited *to be sold*.

Further researches in the Calcutta Public Library and in the Foreign Office, &c., convinced me that Sir J. Stephen's work was thoroughly unreliable, and that we might adapt to himself what he has wrongly and flippantly said about James Mill (II, 149), and say that his trenchant style and *ex cathedrâ* air "produce an impression of accuracy and labour which a study of original authorities does not by any means confirm."

I hope that some day a new edition of the report of the Trial will be published. If the misprints were corrected, and if the depositions of the same witness on different days were brought together (indicating of course that they were taken at different times), much of the obscurity and entanglement of the report would disappear.

But a republication should be accompanied by copies of the examinations on 6th May 1775 and by copies and translations of all the exhibits. The originals of nearly all have been discovered in the High Court Record-room and more are likely to be found.

The jewels-bond, Exhibit A, should be published in *fac simile*.

It remains for me to acknowledge my obligations to many friends for help rendered to me. Among them I would particularise Mr. Gupta, B. C. S.; Babu Dina Nath Ganguly, the Government Pleader at Murshidabad;

Mr. Belchambers, the Registrar of the High Court ; the High Court Record keeper, Babu Kali Charan Palit, and the venerable Pandit Ishwär Chundra Vidyasagar. My obligation to the last gentleman is, that he has lent me his copy of the original report of the Trial, published by Cadell in 1776.

I have also received some valuable information and documents from Rajah Rajendra Narain Deb of the Sobha Bazar family.

H. BEVERIDGE.

CALCUTTA, 31st May, 1886.

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THE TRIAL OF MAHARAJA NANDA KUMAR.

CHAPTER I.

INTRODUCTION.

I INTEND to discuss in this essay the famous trial for forgery which was held at Calcutta, in June 1775, before the Supreme Court of Judicature. In doing so, it will be my duty to comment severely on the conduct of Warren Hastings and of Sir Elijah Impey, and I believe I shall be able to prove that the execution of Nanda Kumar* was a judicial murder.

I shall endeavour to establish the following nine points:—

1. That the bond-exhibit A† of the trial was not a forgery, but was the genuine deed of Bolaqi Das Seth.
2. That no attempt was made to prosecute Nanda Kumar before May 1775.
3. That there is strong circumstantial evidence that Hastings was the real prosecutor.
4. That Kamáladdin Khan, the principal witness in the three trials for conspiracy and forgery, was closely connected in business with Kanta Babu,‡ the banyan of Hastings, and was the intimate friend of Sadarad-din Munshi, who was formerly in the service of

* i.e., the son of Nanda—a name of Krishna. I have separated the two words which make up the name in order to show distinctly that the penultimate syllable is long. In Bengali the name is written as one word, Nand(a)kumar.

† It was marked Exhibit A at the trial. It may also be called the jewels-bond. (Howell's State Trials, XX, 958.) In future references to Howell, I shall quote only the number of the column.

‡ The Arabic word *fazr*:—fictitious—is the proper term to denote the relation of Kamaladdin to Kanta Babu. *Bendmidas* is, I think, a solecism, though it is often used.

Introduction.

Graham of Burdwan, but who, at the time of the trial, had attached himself to Mr. Barwell (1200). I shall also show that this man, Kamálddin, was one whose word could not be believed, and that he was correctly described by General Clavering as an infamous creature, and by Mr. Fowke as the scum of the earth.

- 5. That the trial was unfairly conducted, and that, in particular, the Chief Justice's manner was bad throughout.
- 6. That the jury was prejudiced and incompetent.
- 7. That the prosecution entirely failed to prove that the bond was a forgery.
- 8. That the execution was iniquitous, even on the supposition of Nanda Kumar's guilt, and that it was the result of a plot to stifle inquiry into bribery and corruption.
- 9. That Sir J. Stephen has, in his recent book, "The Story of Nuncomar and the impeachment of Sir Elijah Impey," partly from the zeal of advocacy and partly from his having approached his subject without adequate preparation, without knowledge of Indian history or of the peculiarities of an Indian record, made grave mistakes in his account of the trial and in his observations thereon.

The Nanda Kumar charge was one of six preferred against Sir E. Impey. Sir J. Stephen has discussed them one by one, but I do not propose to take up the remaining five or to follow Sir Elijah through the rest of his Indian career. I confess I do not see how his subsequent acts can be defended. I cannot admire his conduct in the Patna and Kasijora causes, nor can I see any justification or excuse for his strange journey to Lakhnau* and his there bounding on the Resident to

* See Appendix C. "The Lakhnau Affidavits." In 1786, Francis wrote to Sir Robert Chambers, that, in his opinion, Impey's "going to Lucknow to take those depositions against the Begums is the blackest and basest transaction, except one, that has yet dishonoured the British administration in India." If Chambers' reply is in the Francis MS., it might be interesting reading.

oppress two helpless widows. To me it seems that his Lordship, as one fond of the classics, remembered and observed, while in the East, the Horatian maxim "servetur ad imum qualis ab incepto processerit et sibi constet," but the career is too sordid to attract the historian and all Impey's subsequent doings pale in interest and criminality before the murder of Nanda Kumar. I must, however, not omit to mention that his most recent biographer has unkindly cut the branch on which Impey's admirers had hung up some shreds of his reputation, after painfully fishing them out of the mire. There they had swayed for a time in an uncertain mauner, but they have now fallen again into Malebolge. I refer to Sir James Stephen's proof (II, 232) under Impey's own hand, that he was paid for his services as Judge of the Company's Court, and that he drew at least Rs. 5,000 sikka a month in that capacity. Alas ! how much rhetoric has been dissipated by the four words, "This I have received."* Sir Elijah's son was

* Sir James considerably underestimates the amount of Impey's salary by reckoning the sikka rupi as worth 2*s. 2d.*,—thus making the annual salary £6,500. The sikka rupi was worth 16 p. c. more than the current rupi, and the latter was reckoned as worth 2*s. 3d.* (Verelst, Appendix, 117 note.) For purposes of conversion, however, the sikka appears to have been worth only 2*s. 6d.*, which would make it 11 p. c. only better than the current rupi (in Impey's day a mere figure of account and not an actual coin). This might be because the sikka fell in value 5 p. c. in two years, and was reckoned in the third as only 11 p. c. better than the current rupi. It was then called a sanwát. Bolts and Verelst both, in their glossaries, give 2*s. 6d.* as the exchange value of a sikka rupi. Possibly Sir James has been misled by Wilson's giving 2*s. 2d.* as the value of the sikka, and has not observed that this is the value for 1855, and that, in the body of the article "Rupya," he states that 100 sikka rupis were reckoned as equivalent to 116 current rupis. In Impey's Memoirs (224) an account of the deposits of the Civil Courts in 1782 is given, in which the sikka is estimated at 16 p. c. better than the current rupi. In the same work (259) there is a quotation which appears to be taken from a minute of the Court of Directors defending the appointment of Impey, and in this paper the amount of salary is stated to be £9,000. The value of the sikka, as verified above, shows that Impey's monthly salary was 5,000 half-crowns, or £625. If to this be added the 600 half-crowns paid to him for the rent of an office, we have a monthly total of £700 and an annual salary of £8,400. His pay as Chief Justice

apparently the person who started the tale of his magnanimity, though by a curious retribution, it is the son who has led to the detection of the legend by placing his father's MSS. in the British Museum. I am sure that Mr. Elijah Impey, the only partner in this bankrupt business of White-washing who appeals to our sympathies, was incapable of suppressing evidence. Still, the fact that he did not read or did not apprehend his father's letter to Thurlow, shows the small value of his "Memoirs." Sir John Kaye followed in his wake and wrote in the *Calcutta Review*, that Sir E. Impey had taken upon himself an immense amount of labour, and had never got a farthing out of it. He, and probably others also, for the tale soon became an article of faith, must have misled Sir William Jones whom we find writing, that it was clear Impey had never taken what his enemies called the bribe—the salary attached to his new office. So, too, Mr. Field tells* us, that Sir Elijah's conduct was irreproachable. If Sir J. Stephen had done nothing more than explode this legend, he would deserve the gratitude of the lovers of truth.

was fixed by the Regulating Act as £8,000, his second appointment, therefore doubled his emoluments. The additional £400 might cover the expense of office-rent. We thus see that Macaulay was right in describing Impey's salary as £8,000.

* The mistake of former writers was, that they did not give Sir Elijah sufficient credit for accuracy in the use of words. They did not perceive that when he wrote that he would decline *appropriating* to himself any part of the salary, he did not mean that he would not draw it, but only that he would not spend it, and that he would be ready to refund if the Lord Chancellor disapproved.

I think that a similar inadvertency has led Sir J. Stephen into an erroneous remark on the charge to the jury. Dr. Busteed, in his delightful volume, "Echoes from Old Calcutta," describes the summing up as short. On this Sir James remarks, that Dr. Busteed must have overlooked the line of the charge which says that the Chief Justice read over the whole of the evidence. Now the term which Impey used was "recapitulate," and as this denotes to summarize or to give the principal heads of a subject, it would not be used by a correct speaker or writer to mean a *verbatim* recital. Against such an expression from Impey the note of the reporter—

With regard to the execution of Nanda Kumar, I adopt the conclusion of Burke, Mill, and Macaulay, and I hope to show that this illustrious triumvirate was justified in condemning Hastings and Impey, and that Sir J. Stephen has not succeeded in his attempted rehabilitation.

Sir J. Stephen is an able man, and so long as he confines himself to his own domain of English Criminal Law, every one must feel a hearty respect for his opinion, but his love of contest has more than once before led him to take up questions which he was incompetent to handle. Some years ago, he made himself ridiculous in the eyes of good judges, by invading the territory of metaphysicians and by attacking, as he imagined, the views of Auguste Comte without studying his writings. At the same time, pressing poor Virgil into the service, he set himself to excuse Pontius Pilate, so that we need not wonder at his coming forward to vindicate Sir E. Impey.* All judges and governors are sacred

the boy Tolfrey or the equally youthful Elliot—is of no weight. Moreover, I think it can be shown that it was a physical impossibility for Impey to read over the whole evidence in the time at his disposal. The verdict was delivered at 4 A.M. on Friday, June 16th, after a deliberation of about an hour, so that the charging came to an end at 3 A.M. On that same morning (1072 last para.) Kista Jiban Das was examined and cross-examined. This, and the short discussion about permitting him to depose, could not have occupied less than an hour. His faltering and stammering must have taken up time. Then Impey had a few minutes to recollect himself (1076), so that altogether he could not have begun his charge till about 1-30 A.M. Impey had thus an hour and a-half at most for his recapitulation, and it is impossible that in that space of time he could read through evidence which fills 131 columns (not pages as Sir J. S. says) of Howell's close print, and also comment thereon!

* Sir J. S. says (I, 34) that Impey seems to him to have resembled closely many other Judges whom he has known. Is not this being rather hard on English Judges at Home and in India? And will Sir James' colleagues of the

¹ The juvenility of the officers of the Court was remarkable. Tolfrey was 20 and a-half, and Elliot was apparently younger, for he was only 17 when he came out in 1772.

William Hickey, the attorney, told the Committee of the House that Peat (of Dacca fame) was only 20 when he became Hyde's clerk, and that his (Peat's) partner Wroughton was only 16 when he was admitted an attorney. Impey was 43 in 1775.

in the eyes, and his highest idea of a touching scene is that of a judge listening to a criminal! Sir J. Stephen has been a very successful man, and his talents and industry have deserved success, but perhaps it is because he has been so successful that he cannot perceive that his abilities are limited. He has the air of believing that, because he has become a Judge of the Queen's Bench Division, he must be right and every other person wrong. I think that we may, without injustice, apply to himself the exaggerated language in which he has spoken of Impey, and say that he has had an excellent legal education, that he is a man of remarkable energy and courage, and that he has a great deal of rather common-place ability. But such mortal weapons will avail little in a contest with the gods! or, to drop metaphor, mere talent will not avail in a contest with the genius of Edmund Burke, on a subject to which that genius devoted years of intense labour. Sir J. Stephen looks at great questions from the point of view of the mere practising lawyer, and in consequence he cannot grasp them: witness his dreary letters on the Afghan question and the Ilbert Bill! The notion which he seems to entertain, that the Nanda Kumar question can be settled by one who has applied to it only a knowledge of English Criminal Law, is about as grotesque as that of pedants "who think to climb Parnassus by dint o' Greek." His rashness has even led him into mistake in his own particular department. Did he not write comments on the Criminal Procedure Bill, which his successor declined to publish from tenderness to the learned Judge's reputation?

Queen's Bench be grateful to him for the comparison? Judges, like Bishops, ought to have a good testimony from those that are without, and I should be sorry to think that any English Judge, in recent times, had such a reputation that a conscientious man like Cornwallis would willingly see him hanged! Nor do I think that any other Chief Justice would have had so little respect for himself or his office as to go on writing by every mail for seven years to a brute such as Thurlow (Sir William Jones called him a beast, though he did it in Greek) without receiving a single letter in reply. (Story of Nuncomar, I, 33.)

I cannot think that the “Story of Nuncómar” will permanently add to Sir J. Stephen’s fame. When the chorus of journalists shall have hushed, and when the time has gone by,

When wits and templars every sentence raise,
And wonder with a foolish face of praise,

the blunders and one-sidedness of the book will be discovered, and men will come back to the truth. They will remember that Cornwallis, an honourable gentleman and no Whig, wrote in 1786, only two years after Impey’s departure from India, begging that he might not be sent out again, and observing that all parties and descriptions of them agreed about him. That again, in 1788—the year of the impeachment—the same high authority wrote that he was very sorry for Hastings, but that if they wanted somebody to hang, they might “tuck up” Sir E. Impey without giving anybody the smallest concern. When the dust of controversy has been laid, men will recur to the opinion of Burke, and accept in shame and sadness the verdict which he pronounced in his speech on Fox’s East India Bill. “The Rajah Nuncomar was, by an insult on everything which India holds respectable and sacred, hanged in the face of all his nation, by the Judges you sent to protect that people, hanged for a pretended crime, upon an *ex post facto* Act of Parliament, in the midst of his evidence against Mr. Hastings. The accuser they saw hanged. The culprit, without acquittal or inquiry, triumphs on the ground of that murder—a murder not of Nuncomar only, but of all living testimony, and even of evidence yet unborn. From that time not a complaint has been heard from the Natives against their Governors. All the grievances of India have found a complete remedy.”* It is a refreshment to read these ringing words and an encouragement to me to proceed with my task.

* The notorious Captain Price gave unwitting testimony to this fact when, in a letter in the *Courant*, signed Simplicity, he wrote “that the fabricators of false evidence received a severe check by the death of the Rajah, is admitted.”

Sir J. Stephen has pointed out some mistakes in my essays, "Warren Hastings in Lower Bengal," published in the *Calcutta Review* in 1877-79, and notably a blunder about the *kúrsináma*. I have no doubt that he is right in saying that this should be *karárnáma*,* and I admit that my mistake shows that I had not sufficiently studied the report of the trial. In fact, I had not a copy of it with me when I was writing my articles in a remote station in Northern Bengal, and was obliged to rely on notes made some months previously in England. These contained the word *kúrsináma*, and as I knew that genealogical trees were often filed in our Courts, I accepted the term without further consideration. This, of course, shows how imperfectly I had read the trial, but my subject then was Hastings and not Impey, and according to my view, which seems also to have been that of Macaulay, it mattered little as regarded the guilt of Hastings, whether the bond was true or false. It was the prosecution and the hanging which I regarded as iniquitous, rather than the conviction, which might have been mainly the doing of the jury, and might have been warranted by the evidence. Another thing which led me to neglect the report of the trial was, that I understood from Farrer's evidence that it was not full or accurate. It was published in England by Elliot, the protégé of Hastings and Impey, and doubtless it is not quite complete. It is also most confused and difficult of comprehension. I have now, thanks to the Calcutta Public Library, obtained the 20th volume of Howell, and have been animated by Sir J. Stephen's example to study the reports of all three trials very closely. I certainly had no idea that so much could be got out of them, and I here offer my thanks to Sir J. Stephen for his putting me on the proper track. It seems to me that an adequate study of the reports will enable us to

* The word, however, does not mean in this trial an account stated as Sir J. Stephen supposes, but only an agreement or promise. See copy of the paper, *post*.

trace the conspiracy against Nanda Kumar and almost to demonstrate his innocence.*

With these remarks I proceed to discuss my first and second points,—namely, that the bond was not a forgery,—and that there was no attempt at a prosecution before May 1775. I must premise that I am unable to treat exhaustively of the first till I come to the account of the trial. I shall then complete its discussion along with the seventh point, *viz.*, that the prosecution failed to prove that the bond was a forgery. As, however, I have adopted a chronological order in my discussion, the question of the genuineness of the bond must rise up early in any narrative of events, for it purported to have been executed on August 20th, 1765,—that is, nearly ten years before the prosecution began. The second point will be elucidated with the first. Both are of great importance, and therefore I trust I shall be excused if I treat them at what may appear to be excessive length.

I perhaps cannot hope to make the subject interesting except to Bengalis and to those Englishmen who like studying historical puzzles and are not, to use the words of Thucydides, unenduring in the quest of truth. To myself, however, it seems that the question of whether Hastings and Impey put Nanda Kumar to death unjustly is far more interesting and important than the oft-debated questions of the authorship of Junius or the guilt of Mary, Queen of Scots. Moreover, the latter subjects have now been pretty well threshed out, and in one of them a far off touch of chivalry makes inquirers unwilling to press the evidence against a weak woman. No

* The trial was originally published by Cadell in 1776. Sir J. S. does not refer to this edition, and probably has not seen it. I gather this from his citing the conspiracy trials as if they too had been published under the authority of the Supreme Court. Elliot's letter to the publisher and the enclosure from the Judges (Impey's Memoirs, 122) seem to show that this was not the case, and the title-page in the original edition indicates that it was only the trial for forgery which was published by authority.

Macintosh, writing from Calcutta in December 1779, says:—"The trial published in England is universally declared on this side to be spurious and false."

such scruple holds our hands in the case of Hastings and Linpey, especially when they have lately secured so redoubtable a champion.

The question of the genuineness of the bond lies at the very root of the case. If it can be shown that the bond was genuine, Nanda Kumar was an innocent man and the victim of perjury, though the jury may still have honestly believed him guilty. The importance of the other point,—that is, of the genesis of the prosecution,—lies in this, that if it can be proved that an attempt was made to prosecute Nanda Kumar for forgery long before he lodged his complaint against Hastings, the probability that the latter was connected with the subsequent proceedings is much diminished. On the other hand, if it can be shown that no one tried to prosecute Nanda Kumar for forgery till May 1775, there arises a strong presumption that the accusation was, as Sir J Stephen admits (I, 89) was the case with the conspiracy charge, a counter-move in the game begun by Nanda Kumar in the previous March. Sir J. Stephen maintains that there is evidence of an attempt at a prosecution early in 1774, and he intimates that I knowingly passed it by. I adhere, however, to my former assertion, and hope to show in due course that what, Sir J. Stephen considers evidence of a previous attempt at a prosecution was really not such. Meantime I may state, that neither Mohan Prasad in his evidence, nor the Chief Justice in his summing-up to the jury, made any allusion to a previous prosecution or to an attempt at one.

In order to deal fully with my subject, I must go far back, and I begin with an account of Bolaqi Das, the man whose bond was said to have been forged. Most of my information is derived from the report of the trial, but I have obtained some interesting and valuable facts from Bolts' "Considerations on India Affairs."



CHAPTER II.

BOLAQI DAS. *

BOLAQI DAS, otherwise Bolaqi Das Seth, was a Hindustani or up-countryman by birth, and belonged to the well-known mercantile caste, or tribe, called *Agarwála*. He was probably a *vaisya* by caste, and he seems to have been a *vaishnab* in religion. He was a *saráf*, or banker, and had his principal place of business at Murshidabad; and was thus brought into contact with Nanda Kumar, who was a native of the district and long resident at the city as diwan of Mir Jafar. Bolaqi was originally a man of small means and in partnership with one Dharram Chand, but he rose to wealth and importance by becoming the banker of Mir Qasim. He had transactions in Dacca and many other districts of Bengal, and had correspondents in Benares, on which place he once, in February or March 1766, granted a letter of credit for a lakh of rupees in favour of Eord Clive.*

When war broke out in 1763 between the Company and Mir Qasim, Bolaqi either voluntarily followed his master's fortunes or was carried along in his train. More lucky than the father and uncle of Jagat Seth, he was not put to death at Bárh; still he did not escape without suffering. He was in camp with Mir Qasim at Baxar, and achieved the disagreeable pre-eminence of being the first person selected by the

* Sir J. S. says that the evidence of this transaction, which is referred to by Impey in his charge, is not given in the report of the trial. He is wrong (954). Perhaps he was not aware that Naba Krishna was Clive's banyan, but even so, he might have seen Clive's name in the entry proved by Kista Jiban. The money was repaid by Clive about five months afterwards. It appears probable from Bolts (II, 48) that Clive wanted the money to invest in diamonds, which were then used as a means of remittance to Europe.

Nawab Vizier Shojá-ad-Daula (brave for the State) as a subject for extortion. He was made over to the Nawab's treasurer, Khaliq Yakut (?), to be squeezed and kept in confinement for about a month. Sir J. Stephen says, that he was confined in his tent, but there is no authority for this, and the probability is that he was kept in some less comfortable place. It was Mir Qasim who was kept under surveillance in his tent. Bolaqi's book-keeper, Kista Jiban, was also imprisoned, but this was about a fortnight later.

About the time of his imprisonment, Bolaqi is said to have received a remittance of treasure through the hands of one Mir Asád Ali. The treasure was being conveyed from Rohtasgarh to Mir Qasim under the escort of Mir Asád, and Mir Qasim told him to make it over to Bolaqi Das. From this arose a point of great importance at the trial, for Mir Asád gave evidence for the defence and produced a receipt for the money bearing Bolaqi's seal, and dated 14 Rabi-as-sáni 1178 H. (either 8 or 11 October 1764). This was material, because Sir E. Impey examined the impression of the seal (a trouble which he did not take in the case of Kamáladdin's) and found that it agreed with the seal on the bond which Nanda Kumar was alleged to have forged. This receipt then, if genuine, was strong evidence in Nanda Kumar's favour, for it went to show that the seal on the bond was the genuine seal of Bolaqi Das. Sir E. Impey, however, disbelieved Mir Asád's receipt, saying that it seemed clear beyond a doubt that the receipt could not have been given by Bolaqi Das, and that the whole was a fiction. He went on to use this as a ground for distrusting the other witnesses for the defence, observing that the fictitious receipt might account for the other witnesses remembering the seals so accurately. Sir J. Stephen has adopted this reasoning, and has added some argument of his own; it will, therefore, be very material to show that both he and the Chief Justice are wrong in rejecting Mir Asád's story as intrinsically improbable or absurd. This, however, I shall defer doing till I come to examine the evidence in the forgery case.

The battle of Baxar was fought on October 23rd, 1764, and though it restored Bulaqi to his liberty, he was plundered of everything he possessed. He lost a box of private papers, and escaped with nothing but the coat (*jáma*) on his back. We learn a good deal of his subsequent movements from the curious work of Bolts already referred to. There are a number of minutes (Vol. III, Part ii, App. A, pp. 52 to 119, Ed. 1775) relating to a quarrel between Lord Clive and a Civilian of the name of George Gray, and in these the name of Bulaqi turns up pretty frequently. Gray had been chief at Malda, but in September 1765 he was a Member of the Council of Fort William, and probably also Collector of Calcutta. Clive accused him of levying a tax on prostitutes, and bluntly wrote to him—"Sir, complaint has this morning been made to me that you are taking money from the whores of the town, which I understand is a practice prohibited by the Company; and, therefore, I desire you will discontinue it until you are authorized to the contrary by the Governor and Council." Gray defended himself by saying that he took the money from the women for their own good; in fact, he was a precursor of the C. D. legislators. Clive was not the man to brook opposition, and on finding some other charges against Gray, he arrested his banyan, Ram Nath Das, and kept him under a military guard, though this was in the town of Calcutta. Gray was indignant at his servant's arrest, and in the discussion which followed, he put some very awkward questions to Clive, such as whether he did not deceive Amichand by a fictitious treaty, and if he could account for Admiral Watson's name appearing on the treaty, though Watson had refused to sign on the ground that to do so would be derogatory to his character as a British officer. To do Clive justice, he had the manliness to answer Gray, though his questions were irrelevant and offensive, and to tell what had been done on the occasion of the treaty with Amichand. And whatever we may think of the sufficiency of Clive's defence, his conduct in meeting the accusations was better than the skulking behaviour of Hastings when he was accused by

Nanda Kumar. The one man boldly said what he could in his defence, and the other shuffled, and by dint of various subterfuges, contrived to evade every attempt to bring him to book. This was perhaps good policy at the time, but the result now is, that, in order to show that Hastings ever denied the receipt of the presents, his latest apologist has actually been driven to quote and use as evidence an anonymous note on a lawyer's brief! (Stephen, I, 73.) Another question which Gray put to Clive is more relevant to our purpose, and was as follows : " Whether you did not give a *parwána* to Bolaqi Das, assuring him that he might carry on his business with confidence ? And, on your return to Calcutta, finding this man a suitor to the Board for recovery of a sum of money lent to the Company in 1763, in a time of distress, which surely entitled him to the Company's favour and protection, whether your Lordship did not send a *chóbdár* (mace-bearer) to order him to quit the Settlement, when it was known that the harpies and spies of Mahomed Reza Khan and Jagat Seth, his known enemies, were hovering about to seize him the moment he quitted Calcutta ? Whether, after thus turning out a man under the Board's protection, you did not, in a few days, send for him back ? Whether you have not since received him with favour ? And whether you have not been endeavouring to collect from this man information against me ? " To this Clive replied as follows :—" I did write a *parwána* (order) to Bolaqi Das in answer to a letter from him, the beginning of July last ; but when I heard from Jagat Seth what an enemy he had been to their fathers (*sic*), I forbade him to come into my presence, and upon my arrival ordered him to quit Calcutta. But, upon Mr. Gray's minute, I ordered Bolaqi Das back again to give the evidence I had before been informed of concerning Ram Nath's conduct, in which Mr. Gray seems to be strongly interested ; and I shall certainly not decline to receive complaints of such grievances as affect the honour or advantage of the Company ; nor will there be any occasion, as Mr. Gray alleges there will, to make use of force or threats to obtain them. With regard to harpies and spies

being employed to seize Bolaqi Das when he quitted Calcutta, I never knew nor heard of *shay*. I have given Bolaqi Das no encouragement; so far from it I have told him that when he has given his evidence on oath, he must not expect the liberty of residing in Calcutta." I suppose that the allusion to Bolaqi's behaviour to the Seths must refer to some suspicion, that he was concerned in the murders of the father and uncle of Jagat Seth at Bárh. Though Bolaqi also was called a Seth, there was no relationship, and probably no friendship, between them.*

Gray rejoined to Clive's reply as follows :—

" The affair of Bolaqi Das, I shall relate from the beginning. Very soon after my arrival in Calcutta, Ramnath informed me that Bolaqi Das had sent down one Sham Lal in order to solicit for leave for him to return to Bengal. He had been a banker, or shroff, to Mir Qasim, and was carried up by him in his retreat; and after suffering of many hardships both from Mir Qasim and Sujá-ad-Daula, he was at last absconding, and afraid to come down lest he should be seized and plundered by the officers of the Nawab's government.

" I thought his case particularly hard, whilst several men who had been in Mir Qasim's actual service, and in arms against us, found forgiveness and protection, that he, a merchant, and of course no member of the Government, nor servant of the Nawab's, should be deprived of the benefit of peace and our protection. After Sham Lal had set forth Bolaqi Das, deplorable state in affecting terms, I informed Mr. Spencer, then Governor, of what I had heard; and he concurring with me in opinion, that it would be beneficial to the country to give Bolaqi Das, and every other merchant who might be in the same circumstances, encouragement to re-settle in these provinces, from a motive of real humanity as well as from a political view, that gentleman granted him a *parwána* to return. I sent the *parwána*, and a letter of my own, under care of Ramnath, together with Sham Lal, who only knew the place of retreat before.

* According to Bolts (I, 157), the Seths were weavers by caste, but this seems a mistake. They were Rajputs, of the tribe of Marwaris, and came originally from Jodhpur. (Hunter's Statistical Account of Bengal, Vol. Murshidabad, p. 253.)

It occurred to me, that Bolaqi Das had wrote, but now I recollect, that, having asked if Sham Lal had brought any letter from Bolaqi Das, I was informed Bolaqi Das was afraid to write, lest his letter, falling into the hands of improper people, might discover his retreat and ruin him; and therefore he preferred the verbal application of his *gomastah* (agent). Be that as it will, Ramnath and Sham Lal went up, and what occurred amongst them after their departure I know nothing of; but at last they returned with Bolaqi Das, who, on his arrival, expressed very great satisfaction in the protection and favour he had received; and sometime after he offered me a present, which I had no intention of profiting by, to the truth of which I can bring undeniable evidence.

* "Bolaqi Das had obtained a *parwána* from Lord Clive, of which I present a copy, and desire it may be translated and annexed. This, as well as Mr. Spencer's *parwána*, was sufficient sanction for him to remain here in security. He accordingly lived in the place openly, and made an application to the Board for payment of a sum of money* borrowed from him at Dacca; and no objections were ever started to his residing at Calcutta, until the return of Lord Clive, who, notwithstanding the circumstance of his own *parwána*, and Bolaqi Das' application to the Board, sent his *chóbdár* with orders to turn him out of our Settlement and protection. Bolaqi Das, in the utmost distress and apprehension of his life, should he fall into the hands of Jagat Seth, his mortal enemy, now so much in power, or of Mahomed Reza Khan, a great number of whose spies were lying in wait for him, sent to inform me of his situation, and begged I would save his life and honour. I was shocked at this transaction, and sympathizing with the distresses of a man to whom I had promised assistance, I thought it my duty to give him shelter in one of the *pergunnahs* under my charge. He remained in this retreat, till after I had desired Lord Clive to lay before the Board the informations he had received touching my conduct; when his Lordship in diligent search for

* *Note of Bolts.*—"No less than 2,30,000 rupis, which he lent the Company in their distress in 1763. Not being able to procure justice in Bengal, Bolaqi Das was reduced to the necessity of sending an agent to England, to solicit payment from the Directors, who at last gave orders to their President and Council to pay off his demand. See letter H, numbers III to VII. But Bolaqi Das did not touch the whole amount."

charges against me, having discovered Bolaqi Das' retreat, sent for him to town, received him into favour, and demanded a relation from him of all that had passed between him and me.

"I remember something of Ramnath or Sham Lal's mentioning the great obligation Bolaqi Das would lay under to me if I could assist him, and that he would not fail to acknowledge it by a considerable present; to which I answered, it is very well, I shall be glad effectually to assist Bolaqi Das, and then it will be time enough to think of a present, or words to that import. But by this I never intended to imply or authorize a bargain for myself; and my subsequent refusal of an offer actually tendered to me by Bolaqi Das himself should put the matter beyond a doubt.

"I must take this occasion to represent to the Board, that I have been informed Lord Clive makes a practice of sending for people produced as evidence against me; and that he, or his munshi (Naba Krishna), holds private conversations with them touching their informations."

It will be seen from this extract that Bolaqi was carried up-country with Mir Qasim when he fled after the battle of Baxar, but that he afterwards separated from him. It would appear (1028) that Benares was the place where he was in hiding, and whence he was brought down by Sham Lal and Ramnath. Bolaqi first got permission to return to Bengal from Mr. Spencer, the predecessor of Clive, but it is probable that he did not come down till July 1765, when Clive wrote to him as follows: "Set your mind perfectly at ease, carry on your business without fear, and look upon me to be well disposed towards you." It is just possible that Sham Lal was identical with Sham Bagchi, the servant of Hazari Mal, and formerly master of Mahtab Rai, one of the witnesses to the forged bond. And I think it very likely that Ramnath was none other than the man who gave evidence before Lemaistre and Hyde at the commitment on 6th May, but who was not examined by the prosecution at the trial, but was called by the defence.* At all events both men were called Ramnath Das and were residents of Malda.

* He was threatened with commitment because he deviated somewhat from what he said on May 6th.

Ramnath, the banyan of Mr. Gray, was, according to Vereist and Clive, a man of very bad character, who had committed great atrocities on the people of Malda. He was, however, very badly used in his turn, being kept in confinement in Calcutta and Murshidabad, and subjected to extortion at the hands of Raja Naba Krishna, Clive's munshi. This Naba Krishna was a witness in the forgery case, and the Chief Justice and Sir J. Stephen seem to have been much impressed by his evidence, and specially by his unwillingness to depose against Nanda Kumar. Perhaps they would have given less weight to his testimony, if they had known his moral character, as shown in Bolts' work, and been aware that he was on bad terms with Nanda Kumar on account of the latter's having taken part in prosecuting him on a charge of having violated a brahman's wife. A Hindu, who could be accused of such a charge, was not likely to be very scrupulous about giving evidence against a brahman. If the charge was true, he was a scoundrel; and if it was false, he could not have much reverence for brahmans or for Nanda Kumar, when he knew that the latter had joined with another brahman to bring an odious charge against himself.

Of course, Gray got the worst of it in his quarrel with Clive, and he had to resign the service. His last words about Bolaqi Dās are in a letter dated February 8th, 1766, in which he says that Bolaqi was always grateful to him for the assistance he afforded him in his distress, and would never have given any information to his (Gray's) prejudice had he not been compelled to do so.

When Bolaqi first came to Calcutta he put up in the house of Hazari Mal in the Bara Bazar. This Hazari was a well-known merchant and a brother-in-law of the famous Amichand. It was while living in his house that Bolaqi was said to have executed the bond, which was the foundation of the charge of forgery. I shall discuss the question of the genuineness of the bond more fully hereafter, meanwhile I have to point out that Sir J. Stephen's remarks (I, 125, and especially the note) lead me to doubt his having perused the

bond with attention. He expounds the law about depositaries, and observes that Bolaqi must have considered it very hard to be called upon to make good the misdeeds of the people who plundered his house at a time of confusion. But the bond does not say that the jewels were simply deposited. They were placed with Bolaqi to be sold; and as this was done more than* seven years before (June 1758), Nanda Kumar might reasonably say that Bolaqi should have sold them, and that if he chose to keep them for seven years and two months and then lose them, he was bound to make the loss good. Besides, this may have been only Bolaqi's way of accounting for the disappearance of the jewels. He may really have sold them or otherwise disposed of them, and then ascribed his not having them to the troubles of 1764.† The bond recites that Bolaqi's house at Murshidabad was plundered at the time of the defeat of Mir Qasim, and that the jewels were taken away then. This excuse seems a bad one, and I do not wonder at Nanda Kumar's refusing to accept it and insisting on a bond. Bolaqi is said to have told Nanda Kumar that his houses had been plundered, both at Dacca and at Murshidabad, and that the Company owed him a great deal of money, and that he could not pay then. It seems to me very likely that what Bolaqi called plundering was the taking possession of his house and money by the Government. He was with Mir Qasim's army, and therefore liable to be treated as a rebel. It may have been in his way that over two lakhs of his money came into the hands of the Company.‡

Sir J. Stephen is mistaken in supposing that the money due by the Company was in bonds. There is nothing about

* The original bond is still in the High Court. The Persian words there are "barde farokhtan," for the purpose of sale.

† Sir E. Impey suggested this to the jury, and I think it was a reasonable remark, though I cannot agree with Sir J. Stephen in thinking it not an obvious one. I am sure that it was one of the first which would have occurred to a native mukhtar who was defending Nanda Kumar, or to a civilian judge who was trying him.

‡ See Consultation of 12th August 1765, Appendix G.

bonds in any of Bolaqi's documents ; they are not mentioned in the jewels-bond, nor in the letter (Exhibit L), nor in the power-of-attorney, nor in the will, and the fact is, as Price tells us, they were not in existence until the money was paid to Ganga Vishnu. The fact that there were no bonds would increase the difficulty of Bolaqi's getting his money, and we know that he never did get it. He tried to do so for about four years, but it was not till six months after his death, and when Verelst was going home, that the money was paid. The long delay, and the fact that Bolaqi spoke in his power-of-attorney of *darbar expenses* (money paid to persons in power) as being necessary, would be sufficient to show the falsehood of Mohan Prasad's assertion that the bonds were obtained without expense, if indeed this story were not too absurd in itself for credence.

If the defeat of Mir Qasim's army referred to in the bond be the battle of Baxar, I do not see any connection between that event and the plunder of Bolaqi's house in Murshidabad. Any fighting and plundering which took place at Murshidabad seems to have occurred in July 1763,—i.e., fifteen months before the battle of Baxar. The hearsay statement of Kista Jiban about plundering cannot be relied on. Nanda Kumar's witnesses, Jai Deb, Chaitanya Nath, and Yar Mahomed, did not say that Bolaqi made any reference to the jewels. The only witness who referred to them was Lalla Doman Singh, and he said the conversation took place before the attesting witnesses arrived. It ought to be remembered that Nanda Kumar was not the first person to speak about darbar expenses. Not only are these mentioned in Bolaqi's power-of-attorney, but Mohan Prasad himself tells us (965) that Padma Mohan spoke to him about such expenses before he saw Nanda Kumar. He "mentioned some circumstances concerning Gokul Ghosal and Naba Krishna ;" and he said, "you must prepare a jewel and then the gentlemen will pay you your money." Now we know, and Chittagong* knows, what

* See Mr. Cotton's Revenue Memorandum on Chittagong.

sort of a man Gokul Ghosal was, and it is not to be believed that he or his master Verelst, or Naba Krishna, who was another of Verelst's banyans, would allow money to pass through their hands without levying toll on it. Compare the curious remark in Bolts' Note to Gray's Narrative : "Bolaqi did not touch the whole amount." Bolts' third volume was published in 1775. His meaning may be that Bolaqi died before he got the money, or that darbar charges were deducted. Possibly he is referring to Nanda Kumar and the civil suit against him.

We learn from the following letters of the Court of Directors the real nature of Bolaqi's claim. These are so honourable to the Court, and it is so refreshing to come across instances of fair dealing at that time, that I have much pleasure in quoting them in full. They are to be found in Bolts' work. Bolaqi, in despair, had sent a power-of-attorney to Bolts in England, and he applied to the Court, who in turn showed him that proper orders had already been passed.

APPENDIX. CONSIDERATIONS ON INDIA AFFAIRS. Part II, Vol. III, p. 581 (Bolts, 1775).

Copy of the 84th paragraph of the Company's General Letter to Bengal, dated the 21st November 1766.

"On your Consultation, 12th August 1765, appears a demand of Bolaqi Das, for payment of 2,80,000 rupis, lent the Company shortly after the breaking out of the war with Mir Qasim, and which sum, you represent, had been passed to the credit of Mir Jafar, on appearance of its having been the property of Mir Qasim; and agree, that the President shall apply to the Naib Subahdar to obtain from him recovery thereof. But as we cannot trace any farther steps in this affair, you are to inform us of the issue; or if no such application was made, you must assign your reasons for it, as it does not appear to us you had sufficient grounds to believe the money to have been Mir Qasim's property."

Copy of the 119th paragraph of G. L. to Bengal, dated 11 Nov. 1768.

"Notwithstanding we gave directions for your making a particular inquiry into the demand of Bolaqi Das, we have received no farther information thereon, and can trace no other steps taken in the affair than your resolution to make such an inquiry. Such extraordinary

remissness in an affair of this consequence cannot fail to be very displeasing to us; more especially as it prevents our giving a satisfactory answer to his attorney, Mr. Miguel Van Colster, who is come to England to solicit the payment of the money. We therefore positively repeat our orders for making the most circumstantial examination into this affair, and reporting the result thereof to us by the earliest opportunity. Copy of Mr. Van Colster's memorial to us goes in this ship's packet, together with his draft on Bolaqi Das for £100, which we have advanced Mr. Van Colster for his subsistence in England."

Copy of the 77th paragraph of G. L. to Bengal, dated 17 Mar. 1769.

" Since we wrote you on the 11th November last, paragraph 119, regarding the demand of Bolaqi Das, having received another memorial from his agent, Mr. Van Colster, thereon, we send inclosed a copy thereof, and further direct, that you immediately set about a very particular examination whether the money lent the Company by Bolaqi Das, as mentioned in our letter of the 21st November 1766, paragraph 84, was actually his property or not; for this purpose you must apply to all such persons as you think can give any insight into this matter, and in particular to the officers of the Government at Dacca, and to Mahommed Reza Khan, who, we suppose, held a principal post in that Government at the period when the loan was made. Upon the whole, you are to do strict justice betwixt him and the Company in this affair; and enter your proceedings thereon on your records for our information. We have lent Mr. Van Colster the farther sum of £500 to defray the expenses he has incurred in England and charges of his passage to India; for which he has given bills on Bolaqi Das, which are inclosed in the packet herewith."

Sir J. Stephen has been led into several mistakes by thinking that the money which Bolaqi sought to recover was in bonds. He observes (I, 126): "There is something suspiciously complete in the whole document," i. e., the jewels-bond. "Why was it necessary to enter into such a long story in order to explain what the bond treats as an absolute liability? Besides, the promise to pay, 'when I shall receive back the sum of two lakhs of rupis and a little above, which is in the Company's cash at Dacca,' looks as if a foundation were being laid for the demand being made on the pay-

ment of the Company's bonds at Belvedere through the intervention, as was said, of Nanda Kumar. Probably something of this sort was in the mind of Mohan Prasad when, in answer to a question as to the time when he was so far certain of the forgery as to prosecute, he said : 'When I saw the amount of jewels, the name of Rogonath (~~the~~ alleged depositor as to whom no account was given), and the mention of plunder, I know it was forged, and from the nature of the bond, which is not regular in itself, being conditional : bonds are not commonly made out so when money is received.' Probably Sir J. Stephen has not seen many bonds executed by natives of India ; I can assure him that what he regards as a long and unnecessary story is just what a native would be likely to put into a genuine bond. It might, however, have occurred to him that if the bond were a forgery, the forger would probably be so far an adept at his trade as to insert only what was usual. What Mohan Prasad meant by saying that bonds were not commonly made out conditionally when money was received, it is difficult to say. The observation was irrelevant here, for no money was received when the bond was executed.

Sir J. Stephen's remark concerning the laying a foundation for the money's being demanded when the Company's bonds were paid, is very curious. I have no doubt that, in one sense, such a foundation was being laid, but it was a good and honest foundation, and Nanda Kumar and Bolaqi joined in laying the stones. The quotations which I have above made from the Court of Directors' dispatches show, that the money had been lent at Dacca, for they particularly enjoin the making of inquiries from the officers of the Dacca Government. Similarly, the list of Bolaqi's assets, given in his power-of-attorney of January 1769 (944), is headed by the entry "the English Company at the Dacca Factory" ; the bond, therefore, was drawn up in accordance with facts. Further, I think that the reference in the Court's Letter to the Company's Consultation of 12th August 1765 throws light on Bolaqi's assertion that he had been plundered at Dacca. As

we know from Gray, Mahomed Reza Khan was Bolaqi's great enemy, and as he was in charge of the Dacca Government, he may have laid hold of Bolaqi's property at Dacca, as soon as the breaking out of the war, and Bolaqi's absence with Mir Qasim gave him an opportunity and an excuse for doing so. I have not yet seen the Consultation* of 12th August 1765, but I can hardly believe that the money was lent to the Company in the ordinary way of business. Bolaqi seems to have been with Mir Qasim when the war broke out, and therefore he could hardly have been at Dacca and have lent the money there to the Company shortly after the breaking out of the war. And if he had done so, he surely would never have ventured afterwards into Mir Qasim's camp, or have escaped being put to death by that jealous prince. Besides, it is hardly credible that the Company would first borrow the money from Bolaqi, and then turn round on him and say that the money was not his! For all these reasons I am of opinion, that the money was taken as a benevolence, or forced contribution, ~~and~~ under circumstances which might well be designated by Bolaqi as plundering. If so, that is, if the plundering was by constituted authority, and not by a mob or by the soldiery, I see nothing hard or improbable in Bolaqi's consenting to repay Nanda Kumar when he got his own again. I shall hereafter show that he himself called upon one Mir Ashraf to restore a boat and other things which he had deposited with him during the troubles.

It is important to notice the date of the Bengal Consultation. It was 12th August 1765, and therefore just eight days before the execution of the jewels-bond. At that time Lord Clive was Governor, and Nanda Kumar was a man who, at one time at least, had influence with him. Clive had upheld Nanda Kumar in old times against Hastings, and both men were supporters of Mir Jafar, and vexed at his supersession by Mir Qasim. The scurrilous life of Nanda Kumar, published by Sir

* Since writing this, I have received the Consultation of 12th August 1765 from the Home Office, and find that it confirms my supposition; *vide* Appendix G.

James Stephen, tells us that Clive was at one time so partial to Nanda Kumar that the people called him the black Colonel. It is true that the life goes on to say that Clive found Nanda Kumar out, and would not employ him, but it also says that he was protected by Naba Krishna, that is, Clive's munshi. I think, therefore, that we may hold that Nanda Kumar had influence with Clive in 1765, and that Bolaqi may have considered him as a likely man to procure him payment of his money. Nanda Kumar's influence seems to have continued throughout Verelst's government, for he often went to Belvedere, and I find from Bolts (Vol. I, App., 57) that, in 1768 or 1769, Verelst reversed two decisions of the Mayor's Court against Nanda Kumar, and decreed the cases in his favour.

Bolaqi lived, as has been said, for some time in Hazari Mal's house in Bara Bazar, then occupied another in the same Bazar and east of Mohan Prasad's, and eventually put up in Mohan Prasad's house. He does not seem to have done well in Calcutta, and I suppose he never recovered from the blow inflicted on him by the battle of Baxar and the ruin of his patron. The locking up of two and-a-quarter lakhs of rupis in the Company's treasure chest at Dacca must also have been heavy on him. On one occasion he got into trouble with the Court of Kachahri and was imprisoned for a night and a day: possibly this was a punishment for contempt, as we find that he went to Chandernagore to avoid service of process. It may be, too, that he was mixed up in some way with Bolts, for there is a reference to him in the power-of-attorney, and in Exhibit Q there is a large payment on account of a lawsuit in the Mayor's Court, to which Sparks, a friend of Bolts, was a party.

It was while in Chandernagore that Bolaqi gave a bond of Rs. 10,000 to Nanda Kumar. It was written by Mohan Prasad's brother, probably in Nagari, for Mohan Prasad* was an up-countryman, of the same caste as Silavat, and therefore, probably, as Bolaqi (955).

* His signature in Nagari appears at the foot of his examination of 6th May.

In January 1769 — nine days after the middle of Paush 1825 Samvat* — Bolaqi was in bad health, and resolved to go to Benares. With this in view, he drew up a power-of-attorney in favour of Mohan Prasad and Padma Mohan. In it he says, that he is not concerned in trade in Calcutta. Some of his debts and credits are set down, and among them the bond for Rs. 10,000 in favour of Nanda Kumar. This last entry was relied on by Mohan Prasad as proof that the bond for Rs. 48,021 was a forgery, as otherwise it would have been mentioned. No doubt this is evidence against its genuineness; but, on the other hand, the list of debts is confessedly incomplete. It does not contain the amount of the money due by the Company, though this was by far the largest part of Bolaqi's estate, and at the end of the list it is written.— “This is wrote by guess, and besides this, whatever may appear from my papers is true debts and credits.” In fact, the list was not drawn up by Bolaqi. It was prepared in Calcutta by Kista Jiban, in Bolaqi's absence, and taken by Padma Mohan to Chandernagore for his signature. It also appears from Kista Jiban's evidence that he did not go further back in preparing the list from Bolaqi's books than 1766. The earliest date in his books was, he says, 13th Sravan 1823 Samvat, and this, he added, corresponded to a period rather less than nine years and two months before the day when he was giving evidence. As his deposition was taken on June 9th, 1775, the earliest date would be April 1766. Now, the bond alleged to be forged was dated 7th Bhadra 1172 B.S., i.e., August, 20th 1765.

Two things in Bolaqi's power-of-attorney are deserving of notice: one is the allusion to darbar expenses already referred to; the other is the mention of a *saráf* (banker) named Raghu Nath Deo. This may possibly be the Raghu Nath referred to in the bond of 1765. Sir J. Stephen says that no account was given of Raghu Nath (I, 126). I think it was for the prosecution to disprove his existence; but I gather

* Samvat is the Vikramaditya era, beginning 57 B.C.

from the mention of his name in the power; and from Mohan Prasad's question to Kista Jiban about Raghu's books (957), that there was no doubt such a man existed. In the power-of-attorney there is the entry on the credit side, "the English Company at the Dacca Factory." No amount is given, which shows the hurried way in which the paper must have been drawn up, but it is clear that this must refer to the two lakhs and upwards which had been taken from Bolaqi. After the list of debits and credits there occur the following words: "The bond of Mir Ashraf* was sold to Mr. Bolts; the bond was of the Court of Kachahri, as well as the *karárnáma*, or written agreement, which he gave in the name of Mohan Prasad. He took the Rule in the name of Mr. Sparks, the wakil; upon it Mr. Sparks filed a complaint in the Adalat; you will appear, and answer about it." This is an interesting passage, as it shows Bolaqi's connection with Bolts, and may explain how he afterwards came to employ him in trying to get payment of his dues from the Court of Directors. In a letter (Exhibit L) which Bolaqi wrote some months afterwards, he speaks of his being unjustly oppressed. It is not improbable that this may refer to some trouble he got into from his connection with Bolts. The power was executed in January 1769, and in the September previous Bolts had been forcibly sent to England.

Mir Ashraf lived, temporarily at least, in Hugli, and owed money to Bolaqi, who employed Gray to get payment of the debt. Gray wrote two letters to Mir Ashraf, which are published in Bolts' work (II, 86), and it is amusing to find from them that Bolaqi was demanding from Ashraf property which he had deposited with him at the time of the war with Mir

* Can this Mir Ashraf be the man referred to in Mr. Vansittart's letter of March 6th, 1765 (Price's Letters, 48), as having discovered to Government Nanda Kumar's treasonable correspondence with Rajah Balwant Singh of Benares? There is a Cummar-ul-deen mentioned in this letter as the Munshi of Sir Robert Fletcher. Could this be our friend Commaul? If so, it would dispose of his story that his old name was Mahomed Commaul. However, Cummar (Qamar) ought not to be the same name as Commaul (Kamál).

Qasim. Gray writes : " I am informed by Seth Bolaqi Das, that he lent you a small sum of money when you were in want; that, moreover, during the troubles of Mir Mahomed Qasim, he lodged a *bajra** boat, and some other goods in your hands, and that you have not yet repaid the money, or given back the *bajra* and goods." The second letter was to the effect, that as Ashraf had come to see M. Law, he might as well come and see Bolaqi face to face. These letters show that Bolaqi had no scruple about demanding back property which had been deposited in the time of the troubles, though Sir James thinks this so harsh and unusual when done by Nanda Kumar. Sparks sued Mir Ashraf on his bend in the Mayor's Court, and then a tempest arose because Bolts' enemies said that he was the real purchaser, and that he, an Alderman of the Court, trafficked in cases which came before him. On February 15th, 1769, Sparks wrote to Bolts : " Your good friends of the Council, and some of your right worshipful brethren, began first with me, about the purchasing Bolaqi Das' bond ; but as there happened a pretty full Bench at the discussing that point, a letter was wrote by order of the Court, that they could find no impropriety in said purchase. However, there wanted not some who thought, and still do think you the real purchaser, and that I only lent you my name ; and from these ill-grounded suggestions, they would endeavour to taint your integrity as a Judge of that Bench, by insinuating that you bought up suits at the determination of which you intended to sit a Judge in your own cause ; and from thence they pretended to reconcile the necessity and reasonableness of your disgrace in being expelled the Bench ; thereby searching for a crime after having inflicted the penalty." It will be seen that, if the statement in Bolaqi's power-of-attorney was correct, Bolts was the real purchaser. I conjecture that Bolaqi sold the bond to enable its being sued on in the Mayor's Court, as suits entirely between natives were not cognizable there.

* A large boat used in travelling, commonly called a budgerow.

According to Sparks, Verelst put up Mir Ashraf to sue him for damages sustained in the suit against him on Bolaqi's bond. Possibly Sparks indemnified himself by suing Bolaqi, for in Exhibit Q (1056) there is an item of Rs. 29,000 paid to Lewis Callstry (Van Colster ?), attorney to Mr. Sparks, on account of a decree in the Mayor's Court.

I am doubtful if Bolaqi ever went to Benares. The whole thing may have been a device to enable him to escape notice. At all events, we find him back in the neighbourhood of Calcutta in May 1769. He was then in Chinsurah, whence he wrote the following letter to Nanda Kumar :

EXHIBIT L (981).

Maharajdhiraj Nanda Kumar Ji, at Calcutta, with compliments, written from Chinsurah, by Bolaqi Das, with many obeisances. May God always grant him health, and I shall be joyful. I myself am, by your favour, in health ; you have written a Persian letter, which has arrived, by the reading of which I have been rendered joyful and contented. You have written that till the Governor shall come, you wish me to stay at Chinsurah. Accounts are received that the Governor will shortly arrive. I have, according to your desire, remained here. The Governor arriving, as business will quickly be done, you will do ; I have hopes in you.

You will hear other circumstances where you are ; I am unjustly oppressed ; you are the master. What else shall I write ? You have written about Dharam Chand ; therefore he and F acquittal have settled, which you know ; besides this, nothing respecting state is unknown to you ; accordingly you have told, and what you say, I pay great attention. The Company's money being received, out of it rups two thousand, out of that self* will give. I am not disobedient to your orders. At this time from the side of expense much trouble is ; therefore Rs. 500 you bestow upon me ; then I will give it with the rest. Business quickly will be done there first will give. Brother Padma Mohan is going ; you will be acquainted with other circumstances by him ; you are a master of everything.

* Mr. Elliot explained that Mr. Farrer insisted on his translating the document literally, and that he therefore put "self" here, instead of *yourself*.

At this time you have considered everything, and who, except yourself, will do it? What other representation shall I write? There is no more.

In the year 1826, in Jeth^{the} the 26th, Tuesday (6th June 1769).*

(Signature) **BOLAQI DAS.**

" You are my master; it is necessary you should make inquiries about meat this time. The circumstances above written, you will make yourself acquainted with."

This letter shows that Bolaqi regarded the Maharaja with great respect and looked up to him as his patron. It shows, too, his poverty, and how impossible it thus was that he could pay off the bond unless he got paid by the Company. The letter is also evidence that Bolaqi understood Persian, and, indeed, it is almost impossible that he could have carried on his business as army pay-master, &c., without a colloquial knowledge of Persian. (It would seem from some remarks on the trial, that the Judges thought there was greater difference between Persian and Hindustani (Moors) than there really is.) The reference in the letter to the coming of the Governor must relate to the expected return of Verelst from Murshidabad. We know from a letter in Verelst's "View" (p. 97), that he had gone up on 6th April 1769 to the city, as Murshidabad was then called, to confer with Mahomed Raza Khan about the revenue collections. From another letter written by Verelst on the previous day, and therefore just before setting out, it would seem that he intended to hold the *punya*† at Murshidabad (p. 120).

I presume that the plan between Nanda Kumar and Bolaqi was, that the latter should come to Calcutta and try to get his money as soon as Verelst returned. I do not know whether it was before or after this that Bolaqi did, apparently, see Verelst and present him a petition, which, however, did not bring him any satisfaction (Bolts, App. H, 579).

* It was about a fortnight before this, viz., on 20th May, that Bolaqi executed the famous *karârnâma*.

† The first collection of revenue for the year.

Bolaqi came to Calcutta in the beginning of the next month, but so ill that he soon died. Kista Jiban gives us an account of his last days. "He arrived the first day of Asarh, six or se'yan years ago. He was very sick. Maharaja came to his house to see him about three or four days after his arrival. Bolaqi's wife and daughter, Padma Mohan Das, and many other people, and I likewise, was there. Bolaqi Das said to Maharaja,—here is my wife and daughter and Padma Mohan Das; I recommend them to your care, and I wish you to behave to them as you have behaved to me. Padma Mohan Das has the management of all my business of whatever nature, I recommend him to you." I think that it will be admitted that if Nanda Kumar, after receiving this trust, robbed the widow and daughters by forging a bond and charging Rs. 60,000 for darbar expenses, when in fact nothing was paid, he committed a base and cruel fraud. Impey did refer to this as making the forgery improbable, but I do not think that he gave sufficient weight to it. The fraud had the effect of depriving the family of about a lakh and thirty thousand rupis, and left them apparently with only sixty thousand rupis to divide. If it was a fraud, it was quite as horrid and diabolical as Mohan Prasad's prosecution was, supposing that he knew of the *karárnáma*. It increases the improbability when we find Sayid Gholam Husein (Stephen, I, 264) allowing that Nanda Kumar was a faithful friend. It may be remembered too that Hastings, in his minute of 28th July 1772, singled out the quality of fidelity as a characteristic of Nanda Kumar.*

In June 1769, and only a few days after his arrival in Calcutta, Bolaqi made his will (966). In it he desired that, after the money due to him by the Company was received, his debts should be paid agreeably to accounts, and then the

* Hastings' remarks on this occasion are a curious instance of candour struggling with officialism. "If we may be allowed," he says, "to speak favourably of any measures which opposed the views of our own Government, and aimed at the support of an adverse interest, surely his (Nanda Kumar's) conduct was not only not culpable but even praiseworthy."

remainder be divided into sixteen anas, or parts, of which nine were to be given for religious purposes. . The other seven anas were to be distributed as follows: four anas to his widow, half an ana to each of his nephews, Ganga Vishnu and Hingu Lal, a quarter ana to each of his three daughters, and the one-and-a-quarter ana remaining to his brother Sham Das. The mode of division resembles that of the Mahomedan law, and suggests that the will had been drawn up under the influence of Mahomedan ideas. It has often been said that the Hindus got the notion of a will from the English, but it is more likely that they got it from the Mahomedans. The latter have always had the institution as part of their law, though the legacies can only affect one-third of the estate.

The will recites that the testator, at the request of his wife, made the two nephews his trustees. But the management of all the business, of debts and dues, books and papers, was left to Padma Mohan.

Sir James Stephen can hardly have read the will with attention, for he says that Bolaqi left Padma Mohan a quarter of his property. This would have been singular, for Padma Mohan was not related to Bolaqi, and the latter had a wife and three children. What was left to Padma Mohan was ten per cent. on the Company's money, and 25 per cent. on the other outstandings. The legacy of ten per cent. is very important, for it shows that if Padma Mohan fraudulently allowed Nanda Kumar to retain eight of the Company's bonds, he injured himself very considerably. The value of the Company's bonds retained by Nanda Kumar was Rs. 1,43,435, so that Padma Mohan's commission would have been Rs. 14,343-8. The sum which, according to Mohan Prasad, was unjustly appropriated by Nanda Kumar, was Rs. 1,29,630-7, being Rs. 60,000 as darbar expenses, and Rs. 69,630-7 on account of the forged bond. According, however, to the account settled between Padma Mohan and Mohan Prasad on the one side, and Nanda Kumar on the other (Exhibit M), the amount of the bond and the darbar expenses was Rs. 1,26,320-7. If

we take the figures 1,29,630-7, and they are those which Padma Mohan made Kista Jiban enter in the books, Padma Mohan's loss on the fraud was Rs. 12,963. It is difficult to believe that it could have been to his interest to join Nanda Kumar in committing a fraud which directly deprived him of about Rs. 13,000. It cannot be believed that the item of darbar expenses was wholly unjust. Bolaqi anticipated in his power-of-attorney that such charges would have to be paid, and I feel quite sure that the men who had so long kept Bolaqi out of his money,—that is, Verelst and the others,—would not part with over two lakhs of rupis without a considerable douceur. Let us suppose that one lakh, out of the Rs. 1,29,630, was fraudulently charged, still Padma Mohan could hardly have expected to get even half of this. Nanda Kumar would take the lion's share, and there would be other confederates to be satisfied. For example, there would be the writer of the forged bond, the witnesses, etc.* Padma Mohan, therefore, threw away a certainty of Rs. 10,000 in order to get at most Rs. 30 or 40,000, and committed a cruel fraud into the bargain. I cannot believe this, for, apart from the great risk of detection, it is almost incredible that one whom Bolaqi loved as a son, who, like Abraham's steward, was the eldest servant of his master's house, and ruled over all that he had, would commit such a fraud against the widow and children. And yet this is what we must almost necessarily believe, if we hold the bond to have been a forgery. Padma Mohan must surely have been a party to the fraud, for he accepted the story of the bond and made Kista Jiban make entries in accordance with it. Of course, there is the alternative that he may have been deceived. But this is not probable, and was not the view taken by Mohan Prasad. * He spoke of Nanda Kumar's saying

* There was also Ganga Vishnu to be satisfied. He was not incapable then, and was present at the negotiations. Padma Mohan could hardly have committed the fraud unless Ganga Vishnu were in the conspiracy. It will be seen hereafter that the bonds stood in his name, and that Nanda Kumar gave the receipt (Ex. F) to him.

that he and Padma Mohan had prepared three papers together, and he said that Padma Mohan always put him off whenever he referred to the matter of the bonds. According to his account, he told Padma Mohan very early in the day that the bond was a forgery, and it is not likely that Padma Mohan could remain deceived or silent after this, especially when, if deceived, he himself had been robbed of about Rs. 13,000.

Sir J. Stephen admits that Mohan Prasad's evidence reflects strongly on Padma Mohan, and the Chief Justice told the jury that there was great reason to suspect that Padma Mohan was privy to the fraud, if any fraud had been, and Captain Price, in his account of the trial, takes the same view. Thus, then, we have another improbability. We have the improbability that Nanda Kumar would cheat his friend's family, and we have the improbability that Padma Mohan would do so. The Chief Justice said nothing about the latter improbability in his charge; he was more concerned to show the jury the improbability of Mohan Prasad's bringing a false charge. He twice referred to this, and in exaggerated and inflammatory language. Thus he first told the jury, that if Mohan Prasad knew of the *karárnáma*, the prosecution was most horrid and diabolical, and that Mohan Prasad was guilty of a crime more horrid than murder. Further on he told the jury, that if the defence was true, it fixed an indelible mark of infamy on the prosecutor. Surely this was unfair to the prisoner, especially as Sir E. Impey went on to advise the jury to rely on their private knowledge of Mohan Prasad, that is, I suppose, on the gossip of Calcutta, such as that picked up by Captain Price for instance, and so to determine if it was probable that Mohan Prasad would, through malice, or any other corrupt motive, accuse an innocent person of a capital crime. This was not the only place in the charge where the Chief Justice encouraged the jury to rely on matters not in evidence. Thus he told them that Kamáladdin's evidence was supported by Khwaja Petrusse, "whose character you all know."

Sir J. Stephen says, that, there is not a word in the summing up of which he should have been ashamed, if he had said it himself, and so I suppose he endorses all these appeals to private knowledge, which seem to me so extraordinary. He also says that all his study of the case has not suggested to him a single observation in Nanda Kumar's favour which is not noticed by Impey. Did the improbability of Padma Mohan's robbing his master's family not occur to Sir J. Stephen, and does the Chief Justice notice this? Besides, Impey's declamatory and prejudicial remark about the defence, if true, fixing an indelible mark of infamy on Mohan Prasad, was untrue.* That part of it which referred to his knowledge of the *karárnáma* might do so, though even there, there is room for the supposition, and it is a supposition argued for by Sir J. Stephen, that the *karárnáma* was a forgery by Padma Mohan. But why should the success of the defence, namely, that the bond was genuine, fix an indelible mark of infamy on Mohan Prasad? The witnesses to the bond did not say that Mohan Prasad saw it executed, and so if Nanda Kumar had been acquitted, Mohan Prasad could still have said that he, in good faith, believed the bond to be a forgery. Moreover, the acquittal would not have necessarily carried with it the conclusion that the bond was true, though the conviction required that it should be proved false. It was enough for an acquittal that the forgery had not been proved.

The will was made on June 12th, 1769, corresponding apparently to 32 Jyeshta 1176 B. S., and Bolaqi died a few days afterwards. In the report of the trial,* Kista Jiban is made to say that he died in Aswin, but this must be a misprint, for the will was proved on 8th September 1769, which corresponds to 25th Bhadra.† Mohan Prasad's evidence

* To me it seems that Charles Fox's remarks (Stephen, I, 159), on this part of the charge are quite justified, and that Sir J. Stephen, in calling them shamefully unjust, has only added another volley of abuse to that which he has discharged on every one who does not admire his ugly idol—Sir Elijah Impey.

† Bhadra precedes Aswin.

also shows that the death was in Asarh ; the date is given as 11th Asarh, which corresponds to Friday, 23rd June 1769. About six months afterwards, and between 16th and 24th December 1769, Padma Mohan, Ganga Vishnu, and probably also Nanda Kumar went to Belvedere to get the Company's bonds. There had been delay owing to the necessity for getting probate, and I suspect, too, that Miguel Van Colster had only recently arrived with the Court's letter.

Kista Jiban was asked (1025) if he knew anything about the money being recovered by means of Nanda Kumar, and he said, "Padma Mohan used always to attend at Mr. Verelst's with Maharaja Nanda Kumar; when the Governor was going to Europe, he was at Belvedere; Padma Mohan went with Maharaja Nanda Kumar to wait upon him, and occasioned the Company's bonds to be paid to Ganga Vishnu." Kista Jiban was not present at Belvedere, but he saw Ganga Vishnu and Padma Mohan start, and was told by them that they were going to Belvedere, and that the Maharaja had called them to go along with him. "The payment of the money had been daily expected; they went to get the Company's bonds; Padma Mohan Das and Ganga Vishnu said the Governor was going in a few days, and they certainly should get the Company's bonds. Upon their return, they brought the bonds, and carried them to the widow of Bolaqi Das; a few days after, the Governor went away." The order for payment was passed on 16th December, which was the day on which Verelst delivered his last minute (Verelst' View, App., 120). He resigned the Government on the 24th idem.

The bonds having been brought to Bolaqi's widow, she desired that they should be taken to Maharaja Nanda Kumar, because they had been obtained by his means. "I was present," says Kista Jiban (1025), "I heard her with my own ears : she said he had been very generous to her and had shown great attention; she added, having first settled with him, she would afterwards settle the other accounts of the house." Now I ask, if Bolaqi only owed Rs. 10,000 to Nanda Kumar, as Mohan Prasad says, what occasion was there for

the widow to send bonds to the value of over two lakhs of rupis in order to settle the account? Kista Jiban says, that an account was made up in the widow's presence; Padma Mohan delivered it to Ganga Vishnu. It was written out by the witness and in the widow's presence. One Dharram Chand (see Ex. M) desired the widow to make herself mistress of the business of the accounts in question. No doubt this is the Dharram Chand referred to in Bolaqi's letter of 26th Jeth, and also Ex. M, to be mentioned hereafter. It was proved that the widow was at Benares, and therefore beyond the jurisdiction of the Court; and upon this Mr. Farrer proposed to give parol evidence of the contents of the account. This was objected to by Lemaistre, and the Court concurred with him, but yet allowed the evidence to be given in favour of the prisoner. I do not find, however, that Impey refers to the evidence in his summing up. It may be that the defence was not entitled to give parol evidence of the contents of the account, but I imagine that this could not prevent Kista Jiban's being examined as to what took place on the occasion. After all, the account was a mere *fard*, or list of debts. Lemaistre objected that no evidence had been given of any attempt to procure the attendance of the widow, or to get the original papers from her. But it was clear that she was a *pardanishin*,* and it was also proved that she was residing at Benares, beyond the jurisdiction of the Supreme Court, or even of the Company's Courts.

I now come to a rather thorny part of the subject, and it is necessary to proceed with great care in order to avoid mistakes.

The point is the delivery of the bonds to Nanda Kumar, and the difficulty arises from the fact that we have the discrepant statements of three witnesses—Mohan Prasad, Kista Jiban, and Chaitanya Nath, and that no one of them was fully examined. If we could have had Ganga Vishnu's evidence, everything might have been cleared up. Perhaps the best course will be for me to begin by quoting Sir James Stephen's account of the affair.

* A secluded woman.

He tells us (I, 109) that "probate of his (Bolaqi's) will was granted to Ganga Vishnu, as executor, in the Mayor's Court at Calcutta, on the 8th September 1769. A considerable part of his property consisted of bonds of the East India Company, and about five months after his death (*i.e.*, near the end of 1769) Nanda Kumar, Ganga Vishnu, and Padma Mohan Das went to Belvedere, at Alipore, close to Calcutta, to get the bonds to which Bolaqi Das had been entitled. They obtained them and took them to the widow, who said that Nanda Kumar had been the means of obtaining them for her and had been very generous to her; that she would settle accounts with him first, and afterwards with the other creditors of her husband. Padma Mohan Das gave her an account or statement, showing that, after the payment of all the creditors, including Nanda Kumar, a balance of 60,000 rupis would be due to her, and he mentioned on the same evening to Mohan Prasad the receipt of the bonds. The day afterwards Mohan Prasad saw Nanda Kumar, who told him that the Company's bonds were received, and there would be some 'darbar expenses' on them."

There are several errors in this account. In the first place I doubt if probate was granted on 8th September 1760. The will was proved on that day, but apparently the grant was made later, for the words are "on the 8th September last." The executor undertook to render a true and just account on or before 24th October 1770, and as it is probable that a year was given him for this purpose, it is likely that the grant was made on 24th October 1769. Unfortunately, the date of the grant is not given in the heading to the document. The next statement, *i.e.*, that a considerable part of Bolaqi's property was in E. I. Company's bonds, is a mistake, as has been already pointed out. The bonds were only the means of payment and were drawn for small sums, as Price tells us, to facilitate their negotiation.* Then we are told that Nanda Kumar went to Belvedere with Ganga Vishnu and Padma

* This mistake illustrates the necessity of knowing facts *dehors* the record in order to understand the trial.

Mohan. It is very likely that he did so, but we have no evidence for it. All we know is that Ganga Vishnu and Padma Mohan set off for Belvedere, saying that the Maharaja had sent for them, and that they came back with the bonds. The statement "*they took them to the widow*" is wrong, so far as it relates to Nanda Kumar.

I confess I cannot be sure of what was the order of things after this, but if, as Sir James Stephen's narrative seems to imply, and as Kista Jiban's evidence (1025) would indicate, Padma Mohan drew up the account before going to Nanda Kumar with the bonds, there arises a strong presumption in favor of Ex. A, for the account mentioned the sums due to Nanda Kumar and showed a balance due to the estate of Rs. 60,000. It seems to follow, therefore, that Ganga Vishnu and Padma Mohan recognized the existence of the jewels-bond on the very day they got the bonds from the Company, and spontaneously allowed for it in making up the account. Mohan Prasad says nothing about this settlement. His version is, that Ganga Vishnu and Padma Mohan took the bonds to the Maharaja, and he does not refer to their being first taken to the widow. It is, however, clear from his deposition that there had been some talk about the large claim of the Raja, for he tells us that Padma Mohan told him on the evening that the bonds had been carried to the Maharaja. "*I then showed Ganga Vishnu the power-of-attorney granted to me, and which I had before shown to him, in order to prove to him that Rs. 10,000 only were due to Maharaja Nanda Kumar; and the day afterwards I went to the house of Maharaja Nanda Kumar.*" Four or five days afterwards he again went to Nanda Kumar, who told him that he and Padma Mohan had made out three papers. Finally, he, Ganga Vishnu, and Padma Mohan went to the Maharaja 14 or 15 days afterwards, and received the bonds. "It was night time, the lamps were burning, and the Maharaja was sitting above stairs; we sat down by him, and the Maharaja called for his escritoire and opened it, and took out all the papers that were contained in it, and

spread them before him; he cancelled (by tearing the top) a Nagari bond for Rs. 10,000, he also produced the *patta* (lease)* of the house, and gave the cancelled bond and the *patta* into the hands of Ganga Vishnu;" he likewise tore† the heads of three Persian papers, and said to Ganga Vishnu, "Do you take these." . . . Then "Maharaja Nanda Kumar offered them to Ganga Vishnu, who said, 'Give them to Padma Mohan Das.' Maharaja then looked at me sideways angrily, and turning to Padma Mohan Das said, 'Do you take the papers.' Padma Mohan Das took them, he and Maharaja kept counting by their memories some sums of money on their fingers, but wrote nothing down. Maharaja said, 'I will take eight bonds;' having separated the other seven, he put them into the hands of Padma Mohan Das; there were originally 19 bonds; the Governor and Council took two, on account of commission due to one Michael;‡ the other seventeen were given to Maharaja. When he gave the seven bonds to Padma Mohan Das, he said, 'You have before taken two;' he answered, 'I have.' Maharaja said to Padma Mohan Das, indorse the eight bonds I have taken. Padma Mohan Das answered, 'I will get them indorsed by Kista Jiban Das, the gomastah of Bolaqi Das.' Maharaja put the eight bonds into the hands of Chaitanya Nath Potdar. I, Padma Mohan Das, Ganga Vishnu, and Chaitanya Nath (into whose hands the bonds were put) went out together and sat down in my *baithak-khana* (sitting-room). Padma Mohan Das sent a man to call Kista Jiban Das; Kista Jiban arriving indorsed the eight bonds, and Padma Mohan Das gave them to Chaitanya Nath, who carried them away."

* The bond was a mortgage-bond, and the lease of the house seems to have been deposited with Nanda Kumar as security (see Ex. M, *post*). The bond was, I presume, the one drawn up by Mohan Prasad's brother.

† Tearing the top of a bond is the native way of cancelling it. Ex. A in the High Court still bears the marks of Nanda Kumar's handiwork, for its top is torn downwards for two or three inches.

‡ No doubt this was Miguel Van Colster. The commission may have been part of the £600 which the Directors advanced to him in England.

The witness was then asked if he knew anything of the receipt (Ex. F). He answered that he had been confined in the Court of Kachahri and had not seen the receipt given, but that he afterwards got a copy of it from the Mayor's Court.

This account of the delivery of the bonds and of the indorsements is not so full as that given on a later day of the trial by Chaitanya Nath, and which I shall quote further on. It seems to me that Mohan Prasad's object was to make Padma Mohan as prominent, and Ganga Vishnu as inactive, as he could. It was probably for this reason that he spoke of Kista Jiban as indorsing the bonds, though they must have stood in the name of the executor, and therefore Ganga Vishnu must have signed the indorsements. Both witnesses, however, agreed that the settlement was made at night, and that the indorsing took place at Mohan Prasad's house. Both agreed, too, that Kista Jiban was present on the occasion, and that he wrote out the indorsements, but Chaitanya Nath added that Ganga Vishnu signed them. Though Kista Jiban was examined so many times, he was unfortunately never asked about this matter, or about the receipt (Ex. F). As in the case of the showing of the *kardárnáma* to Mohan Prasad, he was not asked about the matter, and so did not tell. But it appears to me that when the Judges saw that Mohan Prasad and Chaitanya Nath gave different accounts of the affair, they should have elucidated the matter by examining Kista Jiban. It will be remembered that he was not, in the first instance, a witness for the defence.

The above account of Mohan Prasad's evidence shows that the interval between the receipt of the bonds from Government and the delivery of the bond (Ex. A) to Padma Mohan was about three weeks. In this time Mohan Prasad paid three visits to Nanda Kumar,—1st, on the day after the bonds were carried from Belvedere; 2nd, four or five days afterwards; 3rd, fourteen or fifteen days after that.

The point to which I wish to call attention is, that, before even the first of these visits, Mohan Prasad had twice shown

the power-of-attorney to Ganga Vishnu, the object on one occasion at least being to prove that only Rs. 10,000 were due to Nanda Kumar. I do not see how the power could prove this, for it said that the list was written by guess, and that whatever other debits and credits appeared in the books were genuine. For example, the power said nothing about the Rs. 600, which, according to Kamál and Mohan Prasad (940 and 951), were due by Kamáladdin to Bolaqi's estate. Nor was the statement perhaps altogether consistent with Mohan Prasad's admission (943) that there were debits and credits between Nanda Kumar and Bolaqi on Bolaqi's books to a great amount. He should have at least shown Ganga Vishnu these books and not merely the power. And here it may be remarked that these books were never made use of by the prosecution. They were brought into Court on a notice from the defence, but Mr. Durham said, that as they were in Nagari, he could not point out the entries as to which he meant to have examined Mohan Prasad, and he therefore declined making any use of them! It was in this light-hearted way that the prosecution and the Judges got rid of the accounts which had made Mr. Boughton-Rous and his native colleagues chary of deciding the civil suit. The defendant's counsel were told they might use the books if they were able to do so, and this, though the book-keeper, Kista Jiban, was the prosecutor's servant and a witness for the prosecution! I beg to ask Sir James Stephen if this was the proper conduct for Judges who at that time professed to be counsel for prisoners, and if they should not have taken care that the books were fully understood and explained to the jury.

However, Mohan Prasad did, according to his account, show Ganga Vishnu that only Rs. 10,000 were due. When, then, Ganga Vishnu went to Nanda Kumar's house about nineteen days afterwards; he was fully aware, according to Mohan Prasad's version, that only Rs. 10,000 were due, and that the claim on the jewels-bond, &c., was false. Why then did he pay it? Why did he not object on the night

when Nanda Kumar appropriated eight bonds? Why again did he indorse on the bonds on the following morning? It is true that Mohan Prasad does not say that this was on the following morning, but Chaitanya Nath said so, and he was not contradicted. At any rate, the indorsing took place in Mohan Prasad's house, and in the absence of Nanda Kumar. Ganga Vishnu was then surrounded by his friends and servants, and not under restraint by Nanda Kumar. Why then did he indorse the eight bonds and make them over to Chaitanya Nath? He had got the jewels-bond on the previous night, and both he and Mohan Prasad had an opportunity of seeing it before the indorsement of the eight bonds. Mohan Prasad tells us that he suspected forgery on the occasion of his second visit to the Maharaja,—that is, fortnight before Ganga Vishnu indorsed the bonds. And he became sure of the forgery when he saw that it was a jewels-bond, &c. He had also told Ganga Vishnu three weeks before the indorsing that Bolaqi owed Nanda Kumar Rs. 10,000 only.

It would be idle to say that Ganga Vishnu was a fool and did whatever Padma Mohan told him. The very fact that Mohan Prasad showed him the power-of-attorney proves that he did not consider him incapable. His illness had not begun then, and he transacted all the necessary business of an executor. He took out probate, swore to administer the estate, went to Belvedere and got the bonds, and he indorsed eight of them to Nanda Kumar. Yet he made no complaint till about 2½ years afterwards, when he sued in the Court of Kachahri! Even if he was, in January 1770, under Padma Mohan's influence, why did not Mohan Prasad object? He was interested according to his account, for he was to get five per cent. on what he collected for Ganga Vishnu, and he was present both at the settlement at Nanda Kumar's house and at the indorsing. He pretended that Padma Mohan and Nanda Kumar merely counted on their fingers and wrote nothing down. If there is any truth in this story, it must refer to the first interview described by Chaitanya Nath (965), when he

says that Mohan Prasad, Ganga Vishnu, and Padma Mohan settled the account in conversation. Mohan Prasad ignores the second settlement, when, according to Chaitanya Nath, Mohan Prasad and Padma Mohan came and signed the account. (He does not mention their names in this sentence, but he had said immediately before that the signatures on Ex. M were made in his presence.)

It seems to me impossible to account for the acts of Ganga Vishnu, Padma Mohan, and Mohan Prasad in 1770, except on the supposition that the jewels-bond was genuine, and that they knew it to be so.

The bonds must have been drawn out in the name of Ganga Vishnu, who was the only executor who had taken out probate, and we may feel sure that Verelst would not pay the money to anybody else, and that he would take vouchers. Doubtless, he reported the matter to the Directors, and the report and the vouchers will probably be found some day among the archives.* The following full account of the indorsing of the bonds was given by Chaitanya Nath, the cashier of Nanda Kumar (985, 986) :—

“ Q.—What became of them (the bonds) ?

“ A.—Padma Mohan Das gave eight bonds to Ganga Vishnu, and Ganga Vishnu gave them to Maharaja.

“ Court.—Tell what passed on the occasion ?

“ A.—Upon Ganga Vishnu’s giving the bonds to Maharaja, Maharaja said, you give me these bonds in payment. Maharaja told Ganga Vishnu to indorse the bonds, and further, Maharaja Nanda Kumar said, Ganga Vishnu, are you satisfied with this account ? Upon which Ganga Vishnu replied, if anybody should call you to an account about this account, I will say, Maharaja has nothing to do with it. Then Ganga Vishnu took an oath to be answerable to his father, brother, and mother, or any other person, if they should

* The debt due to Bolaqi Das is referred to in the Court of Directors' letter of April 10th, 1771, paras. 37 and 43. The necessity of paying it is given as one reason for reducing Mubarak-ad-Daula's allowance to 16 lakhs. (Bolts, III, App. A, 255.)

inquire about the account ; upon which, eight bonds were delivered to Maharaja Nanda Kumar, and he kept them ; Ganga Vishnu said it was late, he would indorse the bonds in the morning ; after they were gone, Maharaja Nanda Kumar desired me to come to him early in the morning, and take the bonds to Ganga Vishnu to get them indorsed. Next morning I went to Maharaja Nanda Kunar's, and took the bonds with me to Mohan Prasad's house, where I saw Ganga Vishnu, Padma Mohan Das, and Mohan Prasad ; I said to them, indorse the bonds ; on which Ganga Vishnu sent for Kista Jiban Das ; when he came, an indorsement was wrote, written by Kista Jiban Das, and Ganga Vishnu signed it, and delivered them to me ; I then took them away, and delivered them to Maharaja Nanda Kumar."

The next thing, presumably, was for Nanda Kumar to give a receipt for the money. This he did by the following document, which was marked Ex. F in the case, and the seal on which was identified by Raja Naba Krishna and Sadaruddin Munshi (959) as being Nanda Kumar's. It is noticeable that the receipt was not signed, only sealed, and that Naba Krishna said this might be enough in the case of a receipt. But if enough in the case of a receipt, which the executors would have to file in Court, might not a seal be sufficient on Bolaqi's bond ?

EXHIBIT F.

"Formerly, jewels belonging to me were deposited with Seth Bolaqi Das. In the Bengal year 1172, he gave me a bond as the value thereof, for the sum of Rs. 48,021, and a premium upon every rupi of four annas ; I having delivered over the said bond to Ganga Vishnu, who is the nephew and manager of the business of the aforesaid Seth, he paid altogether the sum of current rupis 69,630, in bonds of the English Company, which is the amount of my demand, as principal, premium, and batta (exchange).

Written on the 4th of Magh in the Bengal year 1176."

This paper* enables us to know very nearly when the bonds were paid to Ganga Vishuu. The 4th Magh 1176 B. S. corresponds to 15th January 1770, and is the date laid in the charges as that of the uttering. It is also the date mentioned in the charges as that of forging the bond for the purpose of defrauding of Bolaqi Das, though Lemaistre, J., or whoever drew the charges, might have known that poor Bolaqi was dead six months before.

Sir James Stephen does not seem to be aware that 4th Magh 1176 corresponds to 15th January 1770, for he does not mention the fact, and he writes (I, 111), that the bond was delivered with the rest to Padma Mohan Das, who filed them all in the Mayor's Court, and that this was the publishing complained of. I am not sure what is meant by this. If the meaning be that the filing in the Mayor's Court was the publication, the statement is incorrect. The uttering was alleged to have taken place on 15th January 1770, and that was more than a year before the bond was filed in the Mayor's Court. I do not know where Sir James gets his authority for the statement that the bond was filed by Padma Mohan. The will was proved on 8th September 1769, and the order passed was, that the executor (Ganga Vishnu, and not Padma Mohan) should file accounts on or before 24th October 1770. The papers sent for from the Mayor's Court (1030) show that accounts had not been filed up to 13th November 1770. The executors were then cited to produce them, and to deposit the balance due to the estate in the Company's cash. The next order is of 1st October 1771, and states that it had been suggested to the Court that Padma Mohan had conveyed away several papers belonging to the estate. He was, therefore, ordered to deposit all papers and vouchers. This is the first mention of Padma Mohan, and it appears

* Copy taken from the translation in the High Court Record-room. The original preserved there has on it the initials B. W. (?) and of John Holme, the Register of the Mayor's Court. It has Nanda Kumar's seal at the top. The ink of this document is very fresh, but the paper is somewhat worm-eaten.

from the concluding part of the entry that Padma Mohan appeared on that day, and that either in punishment of his contumacy, or in accordance with the usual arbitrary nature of proceedings in the Mayor's Court, he was put under arrest. He was, however, allowed to attend to his own affairs under the custody of the Sheriff's peons. We learn (1024) that Farrer produced an office - copy of an executor's account delivered in by Padma Mohan on 1st October 1771. (The date 1774 is clearly a misprint.)

The next entry is a petition by a Gosain,* who was a legatee under the will, representing that Padma Mohan had lately died, and that Ganga Vishnu was incapable of taking charge of the affairs of Bolaqi Das.

This petition is dated 14th January 1772, and harmonizes with a statement of Kista Jiban, that Padma Mohan died 3 years and 7 months before June 1775. The 14th January was the first time that the Registrar was ordered to take charge of the books and papers of Bolaqi Das. It is perhaps worth while noticing here, as an instance of the curious way in which business was done in the Mayor's Court, that the Gosain's attorney and the Registrar, or rather Register, was one and the same person, *viz.*, William Magee. The next two entries are dated 21st and 28th January 1773, but I suspect that this is a mistake for 1772, especially as the last entry has the words, "the first of October last," which can only refer to 1771. We learn from these entries that the Court was still trying to get in the papers. There is also a curious account about the papers having been deposited in a room in

* Gosain (*go-swami*, lord of cattle or perhaps lord of one's passions [Wilson], a faqir or jogi, a religious mendicant) Bolaqi left by his will (967) one-sixteenth of his property to the disciples of Gosainji. This may be the Gosain referred to, or it may be Birju Palji, to whom one thirty-second was left. Kista Jiban said (1024) that the Gosain's name was Birjya (Ibisher ?) Ji, and Mr Farrer, in his application of January 25th, 1775, spoke of him as Birja Seer (Sri ?) Gosain, and as a legatee named in the will. It would appear from Kista Jiban's account (1023) that it was Padma Mohan and Mohan Prasad's quarreling, and their failure to pay the Gosain his legacy, which led the latter to move the Mayor's Court.

Padma Mohan's house (which confirms the idea that he never placed any papers in Court), and stating that the room had been secured by two locks,—one given to Bal Govind and another to Padma Mohan's people. Bal Govind appeared in Court on 28th January 1772, and declared, that one day, when he went up to the said room, he found the door had been opened, and that his lock, together with a knot he had tied upon it, had been opened, and on going into the room, he found that the greatest part of the papers were taken away, together with some other things of value. He threatened to complain, and then Keval Ram Panda requested him to keep quiet, and to go and speak to the widow. I presume this was Padma Mohan's widow, for Bolaqi's widow had gone long ago to Benares. Soon after Mohan Prasad came in, when he and the said Keval Ram Panda went near the widow, and spoke her something which he, this deponent, could not hear, as he stood at some distance from them; and soon after Mohan Prasad and the said Keval Ram Panda came to the place where he was, and begged him not to expose her, and that she would deliver up all such papers as remained in her possession, and accordingly the said Keval Ram Panda went and dug the ground in the compound, and got some books and papers out of it, and delivered the same to this deponent, which he put into a chest and locked up.

Upon this the Court ordered that notifications should be issued calling upon persons to apply for letters of administration to the estate of Padma Mohan, who had lately died intestate. This also shows that the real date is January 1772. It was further notified that if nobody applied within 14 days for letters, the Court would appoint some one to take charge of the estate. This was the way in which Padma Mohan's papers came into the possession of the Mayor's Court.

The next entry is dated July 2nd, 1771, but must be 1772,* and is to the effect that Padma Mohan's papers should be separated from Bolaqi's. There is a note by the reporter that

* It is 1772 in Cadell's, i. e., the original, edition.

this order was not carried out till 27th April, 1773, but it is clear from (1034) that here again is a misprint, or a mistake of Elliot, for the true date is 1775. . .

The record of Bal Govind's complaint is important on two grounds: First, it shows that the papers of Bolaqi and Padma Mohan had been tampered with—a fact which might account for the disappearance of the famous *karárnáma*. Further, it shows that Bal Govind, who, I imagine, was one of the legatees under the will, and very possibly was the Gosain's disciple, might have been an important witness in the forgery trial. And we find (1039) that he was a witness, and that his name was on the back of the indictment. The prosecution, however, did not choose to call him, and Farrer said that he was well acquainted with, and could give reasons why the counsel for the prosecution had not called Ram Nath and Bal Govind, and that he should immediately call them. Unfortunately, however, he does not seem to have examined Bal Govind. At least there is no record of his evidence.*

The whole affair of the payment of the bond seems to have been conducted with great openness, and this, I think, goes to negative the idea that there was any fraud. Ganga Vishnu took the Company's bonds home, and it was only by the action of the widow that they came into Nanda Kumar's possession. After this, accounts were made up, and the bond (Exhibit A) was returned in the presence of several witnesses. It was not under cloud of night, but in the morning, that Chaitanya Nath went and had the Company's bond indorsed over to his master. Nor was this done at Nanda Kumar's house, but at Mohan Prasad's, and in the presence of Mohan Prasad, Ganga Vishnu, and Padma Mohan. Finally, Nanda Kumar gave a formal receipt for the money, and in this the bond and the circumstance of the jewels were mentioned, so that Nanda Kumar could never afterwards deny that he had

* Bal Govind is referred to in the report (1062). He is also mentioned by Mohan Prasad as one who had seen Ganga Vishnu a month or so before. It cannot, therefore, be said that Bal Govind was not to be found.

recieved the money, or that he had got it on the strength of the jewels-bond. In fact, every circumstance connected with the payment of the bond indicates that it was genuine. The very facts of the bond's being for the value of jewels and of its conditional character support the view that it was genuine. I may add that the forging of a bond, and that too for not a very large sum, seems alien to Nanda Kumar's character. He was a restless, intriguing, and aspiring man, but it was power he wanted more than money, and he seems not to have had the nature, or the talents, required for contriving a petty fraud. He was not a secret, solitary man, or as Hastings put it, "Nanda Kumar, among whose talents for intrigue, that of secrecy is not the first."*

When the bond was returned, it went immediately into the hands of persons who had an interest in finding it to be a forgery, and had every facility for doing so. Is it conceivable that if the seal of Bolaqi had been forged, Mohan Prasad and others would not have found it out? Bolaqi's seal must have been among his effects, and there must have been many papers bearing his seal. Some people appear to imagine that, as soon as the bond was returned, it was filed in the Mayor's Court, and that it remained there hidden and inaccessible till the advent of the Supreme Court.† But this is a complete

* According to the Sair Matakhirin, he died worth 52 lakhs of rupis in money, besides as much more in goods. He was not then likely to forge for the sake of little more than half a lakh. Sir E. I. referred to this in his charge, but perhaps the jurymen, who seem to have been of a humble rank in life, and whose foreman, John Robinson (a private friend of Hastings, according to Price), became bankrupt or died insolvent less than five years after the trial, were not likely to appreciate the argument. Sir J. S. says, that the amount was over £7,000, and this would be so if current rupis were reckoned at 2s. 2d. each, otherwise it would only be £6,963 (at 2s. per rupi). I do not object to reckoning current rupis at 2s. 2d., but then what becomes of Sir J. S.'s calculation of Impey's salary? There he estimated sikkas as only worth 2s. 2d. (*Vide ante*, note †, p. 3.) Possibly he has added in Impey's estimate of the darbar charges, which in Impey's charge are wrongly put as Rs. 6,000, instead of Rs. 60,000, but of course they had nothing to do with the bond.

† Sir J. Kaye, C. R., Selections, II, 567.

mistake. The bond did not go into the Mayor's Court till years afterwards, and when it did go, it did not become unprocurable. It was not lost amid a bundle of old papers, for Mohan Prasad got a copy of it from the Mayor's Court, and says he showed it to Manahar Mitra in 1773 (1047). If he could get a copy, he could certainly inspect the original. But the fact appears to be that Mohan Prasad never denied that the seal was Bolaqi's. What he seems to have said or implied was, that Nanda Kumar had, by collusion with Padma Mohan, or otherwise, got hold of Bolaqi's seal and affixed it to a false bond. This seems indicated by the question at (1045): Tell at what time you first suspected forgery of the bond, and that the seal of *Bolaqi Das* was improperly made use of? As a matter of fact no attempt was made by the prosecution to prove that the seal was a forgery. The burden was thrown on the defence of proving that the impression was genuine, and it was chiefly because Impey thought that the defence failed to show this, owing to his hasty and ignorant rejection of Mir Asad Ali's evidence, that Nanda Kumar was convicted.

It seems to me very difficult to maintain that it was not necessary to prove that the seal was a counterfeit. The charges all refer to the bond's purporting to be sealed by Bolaqi Das with the seal, or *chhap*, of the said Bolaqi Das. It is true that Impey said that prisoner was not only indicted for forging the seal, and that there was no evidence of his having done so; but this refers to there being no evidence that Nanda Kumar made the seal or the impression with his own hands. Impey thought that there was strong evidence that the seal was a forgery, *viz.*, the proof that the receipt filed by Asad Ali was fabrication.

It seems clear at all events that the bond was not forged in 1770. The recency of the writing, and the fact that it purported to be witnessed by Silavat who had been dead for three years (955), would have detected the forgery. If, as Sir Louis Jackson seems to think, a British jury would be at once able to know if a Persian paper was recent, and would be justified in feeling their understandings insulted by its being

offered to them as of old date, surely a number of natives could do so. Mohan Prasad may not have been able to read Persian, but he was an upcountryman, and so he must have known colloquially the upcountry languages, and must have been familiar with the appearance of Persian papers. And here I cannot help congratulating my Bengali friends on the fact that Mohan Prasad was not a Bengali. Amichand has been proved not to belong to them, and now Mohan Prasad is eliminated! Mohan Prasad's story is, that he suspected the forgery from the first, and it was necessary for him to say so in order that he might make it probable that he had not signed Exhibit M at Nanda Kumar's house, and that he had only signed it afterwards to please the widow. But I do not believe that he thought it a forgery then. This was an afterthought suggested by subsequent quarrels. The reasons, at least most of them, given by him for distrust are ridiculous (1046). He said that Silavat's name on it made him suspect, as Silavat had been dead four years. When he was asked what objection this was to Silavat's witnessing a bond in 1765, he said that a man might write a bond and antedate it. Still we see that there is no allusion to the writing's being recent. These remarks show what shifts he was put to in order to make out that he had from the first suspected the deed. The omission to say anything about the seal's not being Bolaqi's, or about the writing's being recent, is all the more remarkable. It is worth notice that Mohan Prasad in this part of his evidence affected to speak of Kamáladdin as Mahomed Kamál,* though it is abundantly evident from the conspiracy case, etc., that everybody knew him, latterly at all events, as Kamáladdin. It is clear from the remarks of Mr. Weston, the foreman of

* I wonder that it did not strike Sir E. I. or Sir J. S. that if Mahomed Kamál was Kamáladdin, it would have been easier for Nanda Kumar's witnesses to assert that Kamáladdin had really attested the deed. He could hardly have contradicted them successfully about an affair of ten years before, by proving an *alibi*, and they had the impression of his seal to support their story. As the theory is that Nanda Kumar's witnesses were all perjurors, they could have had no scruple in swearing that Kamáladdin was a witness.

the jury, and of Mr. Elliot, that there was nothing unusual in the provision of the bond about a premium. It appears from the foreman's remark that such a stipulation would be common where it would be a long time before the money would be paid. It may be remembered that, according to Hindu ideas, interest could never exceed the principal.

The above remarks seem to me to disprove the suggestion made by Impey that the bond might have been forged after the payment of the debt due to Bolaqi. Impey made this suggestion to get rid of the difficulty about the bond's being conditional. He also said that it might have been done to give an air of probability to the transaction, though Mohan Prasad said that it was the conditional character of the bond that made him suspect it!

But where was the time for forging the bond after the payment? The money was paid by Verelst in the latter part of December and the bond was produced on some day before January 15th, even according to Mohan Prasad, who said the interval was not more than three weeks. Is it likely that in some three weeks, a bond could have been forged and published which would have the appearance of having been written five years previously? If the bond was not forged after the money was paid, is it likely that it was forged before? Could Nanda Kumar know that Bolaqi's money would be paid, and would he make an elaborate forgery on speculation? If Mr. Colster had not succeeded in obtaining justice for his client, the forgery would have been useless, and it is evident that Bolaqi had not much hope of success from Colster, for he wrote to employ Bolts and sent him a power-of-attorney.

If the fraud was contrived after Bolaqi's money was paid, it was surely an awkward and dangerous one. If Nanda Kumar could retain Rs. 60,000 on the false allegation of darbar expenses, it was hardly worth while to make a bond for Rs. 70,000. It would have been just as easy, apparently, for him to assert that he had paid Rs. 1,29,000 for darbar expenses, as he gave no voucher for the charge. In this way

he could have evaded suspicion and danger; for it is well known in Bengal that persons in power never give receipts for money illicitly taken. When, for example, Nanda Kumar charged Hastings with taking bribes, he never pretended that Hastings had given a receipt. Especially would the higher sum as darbar expenses have afforded an easy plan if, as the case almost requires in order to be believed at all, Padma Mohan and Ganga Vishnu were parties to the plot. What necessity was there for Nanda Kumar's allowing Mohan Prasad to be present or to know anything? It may be said that he was Ganga Vishnu's attorney then; but he produced no such power at the trial. His power from Bolaqi lapsed with the death of the latter; at all events its continuance depended on the pleasure of Padma Mohan Das (*vide* will, 968).

Ganga Vishnu, I repeat, was not incapable of attending to business in 1770. His illness began in 1773, for Mohan Prasad tells us that at the time of the trial he had been sick something above two years. He was not quite helpless or bedridden even then, for he came twice to the courthouse one or two months before the trial for forgery and signed papers (953). In fact he did not become incapable until his services were no longer required by the prosecution and the defence wanted to examine him as a witness! It does not appear that Mohan Prasad was his attorney in 1770. The power granted by Bolaqi lapsed with his death, and the power under which Mohan Prasad acted in the forgery case was only dated 6th May 1775, that is, the day on which the unhappy Nanda Kumar was committed by Lemaistre and Hyde (943). Previous to that there was a joint power to Mohan Prasad and Messrs. Hamilton and Lodge. These two gentlemen withdrew upon Nanda Kumar's being committed (935). There was also a Nagari power-of-attorney which had been drawn by Mr. Driver in favour of Mohan Prasad and one John Love. The English power was drawn to Mohan Prasad singly by Mr. Driver, and was dated 6th May 1775. Now what was the meaning of this power drawn to three persons,

two of whom were Englishmen, and why did they withdraw upon Nanda Kumar's being committed ? It is very unfortunate, and, in my opinion, suspicious, that we have not a complete record of the commitment proceedings. One would like very much to see the record of proceedings which lasted from 9 A.M. to 10 P.M., and which left no doubt of Nanda Kumar's guilt remaining in the breasts of either Lemaistre or Hyde. (Stephen, I, 95.) I think that it will be admitted that, after feeling in this way about the evidence, they were hardly the proper persons to preside at the trial !

I suppose that it was to execute the power-of-attorney of 6th May that Ganga Vishnu was brought to Court.

I can only offer suggestions about the power-of-attorney to Mohan Prosad, Hamilton, and Lodge. It does not seem likely that the power was granted to these two English gentlemen for mercantile purposes. I think that it must have been granted for the purpose of the prosecution, and that this object having been gained by the commitment of the Maharaja they immediately withdrew. Possibly they were too nearly connected with Hastings for it to be safe that their names should remain on the record. Hamilton may have been the Charles Hamilton who translated the Hedáya, and who was a protégé of Hastings, and Lodge may have been the civil servant who was Collector of Buzurgupnedpur in Bakarganj in 1786.

I shall be told that it is unfair to make suggestions of this nature, but I think that we are justified in presuming that there was something wrong, for why did not the Judges or Hastings publish the record of the commitment proceedings ? Why were the preliminary examinations in the conspiracy cases published, and not those in the forgery case ? If Hastings had nothing to do with originating the prosecution, the preliminary proceedings would have been the best evidence in his faveur. If these proceedings showed that the prosecution was *bond fide* instituted by Ganga Vishnu and Mohan Prasad, and that Hamilton, Lodge, and Love, were in no way connected with Hastings, there could not have been a better defence for Hastings and the Judges than the publishing of

the proceedings. If the power-of-attorney to Mohan Prasad jointly with the Englishmen was for the purpose of the criminal prosecution, this might help to explain Mohan Prasad's statement to Ram Nath (1039), that he could not desist from the prosecution as he had told a great many English gentlemen of it. Another point worth noticing is, that Nanda Kumar was not committed till about ten o'clock at night on Saturday, the 6th May. It is hardly likely that a power-of-attorney would be drawn up solate at night. It seems probable, therefore, that either the power was drawn up before the commitment was made out, or that it was antedated. It is probable that some special power-of-attorney was necessary to enable Mohan Prasad to prosecute, for apparently he had no power in himself to prosecute. He was not aggrieved, at least not directly, and in none of the twenty counts was there any charge of defrauding him. This makes it all the more unlikely that he was a *bond fide* prosecutor. When he was examined on the *voir dire*, he said that he was to receive five per cent. on all money received, but when the power-of-attorney of 6th May was produced, it was found to contain no mention of such commission. I suppose that if it had, he would have been incompetent to give evidence, and that this was why nothing was said about it in the power which Driver drew up. It was settled by the Court that Ganga Vishnu could not give evidence* for the prosecution, as he had a great interest in the estate of Bolaqi Das (965), and I suppose that by a parity of reasoning Mohan Prasad could not have been examined had it been proved that he was to get five per cent. on the collections. It can never be certainly known if Ganga Vishnu was a consenting party to the prosecution, but the anxiety of the defence to examine him,† in spite of what the Court considered to be the strong

* Readers of Fielding's *Amelia* may perhaps remember that Trent's father-in-law escaped conviction for forgery, because the party aggrieved could not give evidence against him. Sir J. S. will perhaps allow me to quote Fielding, as he was, I believe, a duly qualified barrister.

† This statement requires explanation. It seems clear that the defence wanted Ganga Vishnu produced, for early in the trial we have it recorded that

interest he had in procuring a conviction, indicates that Nanda Kumar and his advisers were confident of his innocence, and believed that Ganga Vishnu would be a friendly witness. Indeed, it would have been very difficult for Ganga Vishnu to give evidence which would not be in favor of the accused, for I cannot see how he could have got over his own acts in indorsing the Company's bonds to Nanda Kumar, in accepting the receipt F, and in not suing or complaining earlier. He had not the excuse of Mohan Prasad, that he had no power in the business during the lifetime of Padma Mohan, for he was himself the trustee and the executor of the will. As Kista Jiban said (1023), "Ganga Vishnu is in reality master."

Captain Price, who was on the grand jury which brought in a true bill against the Raja, and who seems to have been present throughout the trial, tells us that Ganga Vishnu was a well-wisher of Nanda Kumar, and was said to have been hurried on against his will by Kista Jiban, Mohan Prasad, and the legatees to admit of the prosecution! For all these reasons it was important, I think, that the defence should have had an opportunity of examining him. We are told that he was ill, and that a doctor deposed that he could not come to Court without risk of his life. But could not the trial have been postponed for a few days? or could not the jury have adjourned to his house? Apparently if they had even consented to go down stairs, he might have been examined,

'the counsel for the prisoner, suggesting that Ganga Vishnu was under confinement, and not so ill as alleged by the witness (Mohan Prasad), the Court requested Dr. Williams and Dr. Stack to examine Ganga Vishnu, and report to the Court whether he could safely come out and give evidence or not.' But the defence were naturally anxious that he should be called by the prosecution, so that they might have the right of cross-examining him. When, therefore, the Court decided that he could not be called by the prosecution, Nanda Kumar said that if he was sure Ganga Vishnu would speak to the truth, he should be desirous to have him called; but that he considered him as under the influence of Mohan Prasad, and so declined calling him. The jury, however, were anxious that he should be called, and Nanda Kumar consented to this being done.

for part of the difficulty consisted in getting him over the verandah. Williams proposed to hoist him over with ropes, which of course was enough to frighten an invalid. It is observable that Sir Elijah Impey, though he told the jury not to take any prejudice against the prisoner for not calling Ganga Vishnu, said nothing to them about the possible loss to the prisoner by his not being examined.



CHAPTER III.

THE ACCOUNTS.

I SHALL here endeavour to explain the accounts which were made out between Bolaqi and his heirs on the one hand, and Nanda Kumar on the other. This is a point which was very slightly noticed by Sir Elijah Impey in his charge. All he said was—"There are two pieces of written evidence relied on by the prisoner : one, the entry in the book from the karárnáma, on account of the agreement of the sums ; and you will find that the sums said by Kista Jiban Das to be contained in the karárnáma, *viz.*—

Darbar expenses	...	...	...	Rs. 6,000-0
Bond, batta and premium	...	...	,,	69,630-7

Do. amount to the sum of Rs. 75,630-7

which is the sum in the entry.

"The other is the account delivered by Mohan Prasad and Padma Mohan Das, in which Padma Mohan Das had taken credit for this sum ; and the subsequent account likewise contains it. I do not think much can be drawn from this, for the sums had, as Mohan Prasad says, been paid, and therefore they certainly would take credit for them to prevent their being charged with them ; this they would do were the monies properly or improperly paid." To this Sir J. Stephen appends the note, "I have not encumbered my account of the trial with these papers for the reasons given by Impey." He takes no notice of Impey's mistake about the figures, and does not apprise his readers that there was no such total anywhere as Rs. 75,630-7, nor does he take any notice of the Nagari document (Exhibit M), of which a translation is in the report (982-83). Nor does he refer to a similar omission by Impey.

Yet this exhibit was by far the most important document in the case, and it is impossible to decide on the question of Nanda Kumar's innocence without a careful study of it.

Elsewhere Sir J. Stephen gives a better reason for not inserting Exhibit M, namely, that several of the exhibits are to him unintelligible. I do not wonder at this, for Exhibit M is misprinted, and there are also mistranslations of the Nagari original, but this does not excuse Sir James Stephen for rashly taking up the case and dogmatising on it. I have given much time to the study of the accounts, and I think that I have succeeded in comprehending them.

We may describe the accounts as being five in number :—

1. The karárnáma.
2. The entries in the books.
3. Exhibit M.
4. An account filed in the Mayor's Court by Padma Mohan.
5. Exhibit Q, which was filed in the Mayor's Court after having been signed by Padma Mohan and Mohan Prasad.

The first three were the only important papers, and unfortunately the chief of them, namely, the karárnáma, could not be produced at the trial. In the report we have only Kista Jiban's account of it, and the entry which he made in the books from it.

The karárnáma was a paper written by Padma Mohan and signed by Bolaqi. It was an agreement between Bolaqi and Nanda Kumar, and specified the jewels-bond, the darbar expenses, and some debts on account of *tips*,* that is, notes of hand. The karárnáma is the document about which Kista

* Bolts says in his glossary that the word *tip* is particularly used in Bengal for notes given beforehand for money to be paid for services to be performed. They might, therefore, appropriately come into an account in which Bolaqi may have agreed beforehand to give Nanda Kumar money for darbar expenses. Even, therefore, if Mohan Prasad spoke truly when he said that no such expenses were paid, these tips might not be forgeries. Apparently the word etymologically means the mark made by dipping one's finger in ink and pressing it on the paper. Women often sign in this way, and it is called *tip sahib*.

Jiban is supposed to have broken down in cross-examination, a failure which by some was supposed to have had a good deal to do with Nanda Kumar's conviction. It is difficult to make out what Kista Jiban said on this occasion, for he was not fully examined, and he was evidently much confused. He was not even asked in what month or year Mohan Prasad saw the karárnáma! He was examined at an extraordinary hour, about one o'clock in the morning apparently, after the evidence had closed, and when, no doubt, the Judges and the jury were anxious to get free from their seven days' captivity.

Sir James Stephen says: "The paper itself was not produced at the trial. If Kista Jiban Das was to be believed, it was when he saw it under the control of Nanda Kumar, for he said that the Maharaja sent for it from his house; but another witness, Mohan Das, said (if his evidence refers to this document, as I think it does, though it is by no means clear) that he made a copy by Nanda Kumar's desire of the original paper, gave the original to Padma Mohan, and kept the copy himself, which copy appears to have been produced at the trial."

If Sir J. Stephen's interpretation be correct, as I think it is, there is no contradiction between Kista Jiban and Mohan Das. Mohan Das no doubt says that he delivered the original to Padma Mohan, but he does not say that Padma Mohan had it before, or that he brought it to Nanda Kumar's house. His evidence is consistent with the idea that the Raja had the paper in his custody, and that he, at that interview, gave it to Padma Mohan after keeping a copy.

Mohan Das said he made his copy about six years before, and before the rains, and this may agree with the Bengali note at the foot of the original Exhibit M in the High Court, for this says that the account was made up to 8th Phalgun 1176 (17th February 1770), and probably Exhibit M was drawn up and the karárnáma copied at the same time. There is, however, apparently some confusion in the report, for Mohan Das said he took a *ghari* (24 minutes?) to write

the copy, and offered to submit to a trial if they doubted him. Instead of giving him the copy of the karárnáma to re-copy, they set him on Exhibit M, and then the report is that he was an hour and-a-half over it (1054).. How he could take so long I do not understand.

As we have seen, Kista Jiban was not asked the date of the interview, and we are left to conjecture on the subject. The Chief Justice assumed in his charge that the interview took place before the payment of the bond, for afterwards it could be of no use. I do not follow this. Why should not Nanda Kumar have sent for Mohan Prasad after the civil suit was brought, and there was a talk of a reference to arbitration ? In the same cross-examination Kista Jiban said that Padma Mohan had shown him the paper before Mohan Prasad took him to Nanda Kumar's house, and from his evidence (1022) we know that Padma Mohan showed him the paper about the end of 1771. I admit, however, that there is a confusion which I cannot explain, for Kista Jiban said before that he never saw the paper again after he had made the entry in the book from it. However, if the Chief Justice's view be correct, that the interview took place before the bond was paid, there does not seem to be any contradiction between Kista Jiban's evidence and that of Mohan Das. The latter may refer to another day.

The karárnáma must have been drawn up after the execution of the bond (Exhibit A), for it referred to it and described its terms. I therefore do not understand the point of the jury's question—Would not the karárnáma have been given up on a bond to perform the contract ? It looks as if the jury had begun to get lost ! I gather from the notices proved by Mr Jarret (1034), that the karárnáma was dated 9th Paush. (Paush seems a misprint or mistake for Jeth.)

This was a time when Bolaqi was settling up his accounts, and the stipulation of six months may refer to the likelihood that Vérelst would pay the Company's debt in that time. The notice proved by Mr. Jarret is also important, because its terms support the view taken by Sir James Stephen of

Kista Jiban's evidence, and also the evidence of Mohan Das. The notice* called upon Lachman Das, the brother of Padma Mohan, to produce a Nagari paper given to Padma Mohan by Maharaja Nanda Kumar, when Mohan Prasad, Ganga Vishnu, and Padma Mohan were at his house, in Bolaqi Das' own writing,† dated about the 9th of Paush.

According to Kista Jiban, the *karárnáma* mentioned that a sum of money, the amount of which he did not recollect, was to be paid to the Governor and Mr Pearson. Unfortunately I do not know who Mr. Pearson was. There was apparently a Mr. Pearson in Calcutta in 1768 who lost a young wife, for in the Bengal Obituary (p. 69) there is the record of a Mrs. Sarah Pearson who died on 8th September 1768, aged 19. There is also (at p 71) the record of the death of a Mr. Thomas Pearson in 1781 at the age of 42.‡ The *karárnáma* also mentioned Rs 3,500§ on account of tips, that is, notes of hand. There was also mention of a bond on account of jewels on which there was a premium of four anas in the rupi.

Kista Jiban went on to say that, after seeing the *karárnáma*, he made the following entry in the books,—“In the private account of Bolaqi Das, the sum of Rs. 1,29,620-7 is the jama of the account of Maharaja Nanda Kumar Ji, the particulars of which are on the credit side of the account given on inspecting a *dastaviz* (document); the receipt is taken, and it is written on the credit, Maharaja Nunda Kumar's account with you.” Kista Jiban explained that though the entry was made after Bolaqi's death, the words “with you” were employed, as the books were Bolaqi's, and it appeared that there were other similarly expressed entries in the books. It,

* See pp 68 69 Notice was given to Padma Mohan's father also

† From Kista Jiban's evidence it would appear that it was only partially written by Bolaqi.

‡ This may have been the Thomas Pearson who was Judge-Advocate in June 1766, and took part in the trial of Captain Stainforth. (Broome, p 608.)

§ Qy. 35,000? (See 1061.)

therefore, does not appear what grounds the Chief Justice had for saying that the entry carried marks of suspicion with it.

On the credit side there was the following entry :—"The *jama* (credit) of Maharajah, Rs. 69,630-7, the bond of which Bolaqi wrote the particulars, 48,021 rupis, a bond bearing date 7th August 1765, in English words, but Nagari characters, the date of the bond is the 7th Bhadra 1172, Bengal style; Rs. 12,005-4, the account of interest *sawa*, * has been settled; which sums cast up, make 60,026-4; 9,604-3, 16 per cent. on account of sikka rupis added to that make 69,630-7; there is an end of the account." This account of the entries does not seem full, for it gives details only of Rs. 69,630, and not of Rs. 1,29,630.

Kista Jiban said he made the entry under the orders of Mohan Prasad, Ganga Vishnu, and Padma Mohan, but he added that Mohan Prasad was not present, and that when he went to ask him, he told him to go to Padma Mohan, as he was the head man. He could not say if Mohan Prasad and Ganga Vishnu knew of the entry then, but they must have known of it when the papers were filed in the Diwani Adalat (Civil Court, but apparently the witness meant the Mayor's Court).

Kista Jiban stated that he made the entries when the papers were called for by the Adalat (Mayor's Court), and that as near as he could remember, he did so four and-a-half years before. This would make the date December 1770. He afterwards said, however, that he made the account a little after the accounts came into the Court. Unfortunately the entry was not dated, and Kista Jiban said that he could show fifty which had no date (1024). Mr. Farrer is said to have produced an account delivered in by Padma Mohan on 1st October 1774. Of course this date is wrong, for Padma Mohan died in December 1771. Probably 1st October 1771 is the true date, as that was the day on which Padma Mohan attended, and was put under the charge of peons. This would

* *Sawa* means interest equal to one-fourth of the principal.

make the date little more than three years previous to the time of his giving evidence.

Sir James Stephen has a note about the karárnáma (I, 158) which contains two extraordinary misstatements.

He says: "Impey had only to insist upon a rigid application of the rules of evidence, and he would have shut out the strongest part of Nanda Kumar's defence. According to the strict rules of evidence, the entry made by Kista Jiban Das in Bolaqi Das' books after his death, on the report of Padma Mohan, was no evidence. It was a mere record of Padma Mohan's statement, which would not be evidence. As to the karárnáma, the necessary preliminary proof to make secondary evidence of its contents admissible was not given. It was traced to the possession of either Nanda Kumar or Padma Mohan, but Nanda Kumar did not produce it, and there was no evidence as to any search among the papers of Padma Mohan."

Now it is not true that Kista Jiban's entry was a mere record of Padma Mohan's statement. Kista Jiban began by reciting Padma Mohan's statement, and was stopped by the Court, who told him, as Sir James Stephen does now, that this was no evidence. Thereupon Kista Jiban went on to say that he saw the canatama* which was written by Padma Mohan, and signed by Bolaqi Das.

Question.—Are you sure Bolaqi Das' hand was signed to it?

Answer.—I saw with my own eyes that the handwriting of Bolaqi Das was to it.

Question.—Was his name signed to it?

Answer.—These are the words written in the handwriting of Bolaqi Das. "It is written by Bolaqi Das, written above by Padma Mohan Das, the space of six months."

Lower down he was asked: Did you, from the date (I suppose it means datum) of that paper, make an entry in the books? and he answered, "Yes." Impey's charge might have set Sir J. Stephen right here, for he said that "one of the two

* Evidently a misprint for karárnáma.

pieces of written evidence relied on by the prisoner was the entry in the book *from the karárnáma.*"

Then, again, *there was* a search made among Padma Mohan's papers for the karárnáma. We have seen that Mr Jarret proved service of notice to produce on Padma Mohan's heirs. His father and brother too appeared in Court and gave evidence. Lachman, the brother, deposed that he did not come to Calcutta till eight months after Padma Mohan's death, and that Padma Mohan's papers were in Court. Sib Nath, the father, said that he was in Patna when Padma Mohan died, and that he never had any of his papers. After that Kista Jiban went with Mr. Sealey, the former Registrar of the Mayor's Court, and searched for the karárnáma.* He said he had looked over *every one* paper, and could swear that it was not among them. According, however, to the practice followed throughout the trial, Mr. Sealey was called to contradict him. He said that he was present when Kista Jiban looked over the papers, and that he did not look at some because of the indorsements, and some because they were old, and some because he had tied them up himself. Sealey added that he apprehended the papers could not be examined in less than three days. Then Kista Jiban was recalled and asked, Did you examine every bundle? *Answer.*—There were several large bundles of papers of old accounts that I did not examine, thinking them of no use. On this the Court said, "This will not entitle you to read any paper, or make what Kista Jiban Das said, evidence. But though it is not strictly so, I will nevertheless leave it to the jury." Here we have an individual Judge speaking as the Court. I presume that this was Impey, and it shows the prominent part he took. We are not told in so many words that the papers searched were Padma Mohan's, but there can be no doubt they were so, for Padma

* The witness did not say in so many words that he looked for the karárnáma, but he said he looked for a paper wrote in Bolaqi Das' hand, signed by Padma Mohan. It was a paper in which all the agreement was drawn (1034). This could only have been the karárnáma.

Mohan's brother had just said, "both Padma Mohan Das' private papers and those of Bolaqi Das were in the Court. Ganga Vishnu has taken away Bolaqi Das' papers.* Padma Mohan Das' remain there."

We thus see that Sir J. Stephen is wrong in saying that there was no evidence of a search among Badma Mohan's papers. There was a search, and it was such as would probably have satisfied most persons. Notice was also given to Mohan Prasad to produce the papers, and Mr. Jarret's clerk proved that the notice was served,† but of course Mohan Prasad denied that he had such a paper (980). Apparently the copy was not admitted, because service of notice on Ganga Vishnu was not proved, for this was the objection made by the Court on the last day but one of the trial (1049). If so, was this fair? Ganga Vishnu was declared to be a helpless invalid, and Mohan Prasad was his attorney and had got notice to produce, and had sworn that he had not the paper. Was notice to the agent not enough, and was Impey justified in saying, after all the steps taken by the defence, that their attempt to establish the karárnáma as evidence failed of legal proof? So far from thinking that Impey admitted evidence too easily, it seems to me that he wrongly excluded it. Search for the original having been proved as above, he surely ought to have admitted the copy of the karárnáma which Mohan Das made from the original, and which was attested by the brahman, Sangram Lal, and by Chaitanya Nath. Mohan Das deposed that after he had made the copy, he read it (with the original, I presume) and altered the words that were wrong. Chaitanya Nath deposed that the paper was read out to him, and that he signed his name in Bengali. He was then asked if he understood Nagari, and replied that he did not, but that he spoke Hindustani. Then he was asked who explained the papers

* It will be remembered that they were separated on 27th April 1775.

† The originals of the notices on Padma Mohan's heir and on Mohan Prasad are in the High Court and are marked Exhibits O and K. Apparently they are in Jarrett's own handwriting; *vide post* for copies of them.

to him in Bengali. I suppose the Judges were not aware that the only difficulty that Chaitanya Nath could have with the Nagari was in reading it. Any one who can talk Hindustani can understand Nagari, i.e., Hindi, when it is read to him. This Chaitanya Nath was a Bengali and lived at Murshidabad. He asked to be examined in Bengali, saying that he did not know Moors well. Messrs. Elliot, Jackson, and Jebb all swore that he knew Moors perfectly well, and Weston, the juryman, clinched the matter by saying that Chaitanya Nath spoke Moors better than he did Bengali ! It would have been strange if it were so, and still more strange that Weston should know it. In spite of Weston's Eurasian blood and training, I persist in believing that Chaitanya Nath knew his mother-tongue better than a foreign one.

Recent discoveries enable me to carry the matter about the notices to produce further and even to give a copy of the *karárnáma*.

The point is so important that I shall make no apology for giving full details. I am not afraid of encumbering my account of the trial with original papers (Stephen I, 167, note).

The facts then are, that Jarrett, Nanda Kumar's attorney, served two notices for the production of the *karárnáma*. These notices were filed as exhibits in the trial and marked K and O. They have lately been found in the High Court Record-room and are as follows:—

EXHIBIT K.

Notice to Produce.

The King against Maharajah Nanda Kumar.

I HEREBY require you will produce in Court, on the 3rd of June next, an original Nagari paper given to you by Maharajah Nanda Kumar, when you, Ganga Vishnu, and Padma Mohan Das were at his house; it is signed in the proper handwriting of Bolaqi Das, and is to be produced as evidence for the defendant.

2nd June 1775.

I am, &c.,
ROBERT JARRETT,
Attorney-at-Law.

To—MOHAN PRASAD.

SERVED the original Friday, June 2nd, 1775 (the original by a clerical error has 1772).

The paper is marked as an exhibit by Pritchard, 11th June, 1775. .

* EXHIBIT O. . .

The King v. Maharajah Nanda Kumar.

GENTLEMEN,—As administrators of Padma Mohan Das, I hereby require you will produce in the Supreme Court of Judicature, on the 12th day of June next, an original Nagari paper given to Padma Mohan Das by Maharajah Nanda Kumar, when Ganga Vishnu, Mohan Prasad, and Padma Mohan Das were at the house of Maharajah Nanda Kumar; it is signed in Bolaqi's own handwriting, and is to be produced as evidence for the defendant.

I am,

Gentlemen,

ROBERT JARRETT,

11th June 1775.

Attorney for Defendant.

P.S.—It is dated about the full moon, 9 Jeth 1826 (20th May 1769).

To—SIB NATH DAS and LACHMAN RAM DAS, Administrators of Padma Mohan Das, Calcutta.

Mr. Jarrett's clerk, Joseph Satchel (?), proved the delivery of the notice to Mohan Prasad, and Mohan Prasad admitted early in the trial* that he had got the notice, but said later on that he could not produce the paper as he had not got it. .

Upon this Mohan Das was called, and proved that the

* P. 24, col. 2, of edition of 1776.

original *karárnáma* was taken away from Nanda Kumar by Padma Mohan Das. The defence then tendered the copy in evidence, but this was disallowed, the Court observing, "You have traced it into the hands of Padma Mohan Das, but not into the hands of Mohan Prasad. This is not sufficient to entitle you to give the copy in evidence."

After this the Court apparently tried to test Mohan Das' knowledge of Nagari and of Bolaqi's handwriting by showing him Exhibit L. This was on 11th June.

Further on in the trial Jarrett himself proved service of notices on (Exhibit O) Lachman and Sib Nath, the brother and father of Padma Mohan. They were also examined, and said that Padma Mohan's papers were in Court.

Then Kista Jiban went with Mr. Sealey to look for the document among Padma Mohan's papers, as I have already described.

Finally, on the 15th June, Mr. Farrer "offers to read a paper as a copy of the original paper, which the representatives of Padma Mohan Das had been served with notice to produce."

On this the Court observed, "You must prove service of notice on Ganga Vishnu. Mohan Prasad said all the papers of Ganga Vishnu were in the hands of the Register; if any paper was delivered to Maharaja Nanda Kumar, it was not in his presence."

Then Mohan Das was recalled, and he, Sangram Lal, and Chaitanya Nath gave evidence about the making of the copy. They gave detailed evidence about this, but apparently it was of no use. As usual, a man, Jugal Latty, was called in in order to discredit Mohan Das by showing that he was not successful in business. The upshot was, that the copy of the *karárnáma* was not admitted, and that it was marked Exhibit K. "Rejected."

However, it fortunately still exists in the High Court. There is both the Nagari copy made by Mohan Das and an English translation. The Nagari has Chaitanya Charan Nath's signature in Bengali.

The translation is as follows :—

EXHIBIT R, which is marked "Rejected."

Translation of the copy of a *karárnáma*, or agreement, in the Nagari character:

To the Most Excellent Mir* Maharaja Nanda Kumar Ji; from Bolaqi Das, which he will be pleased to read with attention.

On account of my shop at Dacca, there is a large balance of money in the Company's hands due to me. You using your interest with the Governor will procure the payment of it. If, by making the following disbursements, the discharge of the balance can be procured, make them—

1st.—If the sum of two lakhs thirty-three thousand rupis, with the interest on the same, be recovered, I will then give in the following manner :

If the principal and interest be both recovered, I will give the half of the amount of both to the Governor, Mr. B.† and Mr. Pearson, and others jointly.

In case they do not consent to receive this, I will, without fail, give to you the half of the sum intended for the gentlemen, &c., i.e., $\frac{1}{4}$ th of the first sum.

I am not able to pay the whole interest specified in your bond for the jewels, but I will give a fourth part of that interest. I have given a tip (or note of hand) in favour of the Governor and Nawab for Rs. 35,000, the payment of which is at the discretion of you Maharajah.

* Illegible ; possibly " maimanat," in which case " mir maimanat " might mean most prosperous.

† The remainder of the name is torn, but it seems to end in " on," and possibly the name is Boughton (afterwards Boughton-Rœus). There was a Thomas Pearson who came out as a cadet in 1761, and became a Major on 24th February 1769. He resigned the service on 12th January 1770, according to an old list of military men, but it would seem that he retired a little earlier, for we find in list 34 in the 4th Report of the Committee of Secrecy, that he only drew his share of the $\frac{2}{3}$ p. c. allowance to officers out of the net revenues down to 16th December 1769. In this and other preceding lists he is described as a Lieutenant-Colonel. He resigned just about the time when Verelst left the Government, and so possibly he was a relation.* From 1st March to 31st August 1769, he got a $\frac{1}{4}$ share, which amounted to Rs. 2,354.

2nd.—If the principal only, and not the interest, be recovered, the following presents be made:—

From the amount of Rs. 2,33,000, I am bound to give the sum of Rs. 1,00,000 to the Governor and Mr. Pearson. If they will not take, I will, without fail, give the half of that amount to you.

Respecting the bond of jewels, I am accountable for it: it will not be in my power to pay the interest, I will, without fail, pay the principal. I have given in my hand a tip, or note of hand, in favour of the Nawab and Governor for Rs. 35,000, the payment of which is at the discretion of you Maharajah.

3rd.—If by making these disbursements you can effectuate the business, you will do so.

The Governor has taken an oath about receiving money.* You will, therefore, in a delicate manner, let him know that I solemnly swear that the affair shall not be known to any person. You will represent this to him and procure the performance of this business in whatever way it can be done. You are in all respects my master and will do in this affair whatever may be for my advantage.

What shall I write more?

Nagari Ex., 1826, Jeth 9th, Sunday† (20th May 1769).

I, Bolaqi Das, am bound for this obligation, if the business be effectuated within six months.

Witness.—I, Sungum (Sangram?) Lal having examined the original have attested this copy.

Witness.—I, Mohan Das, having examined the original have attested this copy.

Witness.—Chaitanya Charan Nath (signature in Bengali).

‡ A. The present Nagari year 1832, the Nagari year commencing from the month of Chait.

Along with the copy of the *káránáma* there is the translation of a Nagari letter, but I do not insert it here, as it appears to me to be only another translation of Ex. L. I have, however, put it into Appendix N.

* Alluding to the solemn proceeding in the Mayor's Court on the 17th February 1767. *Vide* 4th Report of the Committee of Secrecy of 1773, p. 155.

† According to Reid's Chronol. Tables, the 9th Jeth was a Saturday.

‡ Apparently a note of the translator.

There are several things about the copy of the *karárnáma* which are deserving of notice.

In the first place, the document reads as if it was genuine.

Secondly.—Its contents agree with the description given by Kista Jiban Das of the paper he saw. It mentions the name of Mr. Pearson and the notes of hand for Rs. 35,000, and it explains what was meant by the words "the space of six months" referred to by Kista Jiban.

Thirdly.—There is surely some probability in favour of the genuineness of the *karárnáma* from the allusion in Ex. L to Nanda Kumar's getting payment of Bolaqi's claim. This letter was proved and admitted as an exhibit, and it tells Nanda Kumar to pay Dhariam Chand Rs. 2,000 when he receives the Company's money. Now, would Bolaqi so write unless there had been a previous understanding between them, in other words, unless there had been the *karárnáma*? Here I may observe that Sir J Stephen is wrong in supposing that the *karárnáma* in this case meant an account stated (I, 192). It was simply a pact or agreement whereby Bolaqi agreed to pay Nanda Kumar certain sums in consideration of his getting payment of the money due by the Company. It was unilateral and was only executed by Bolaqi. Even the power-of-attorney given by Bolaqi indicates that such an agreement was probable, for it speaks of darbar expenses, and directs his attorneys to pay whatever disbursements of that kind may be necessary.

EXHIBIT M.

According to chronological order, this document comes before the entries in the books of Bolaqi Das, but I have thought it best to describe those immediately after the *karárnáma* from which they were made.

Exhibit M (982-83) is a statement of the account between Nanda Kumar and Bolaqi's estate. It was a diglott, Nagari and Bengali. The Nagari was written by Padma Mohan Das, and the Bengali by a writer of the Maharajah named Paresh Sudan (?) Gupta. Chaitanya Nath said that this man was in Calcutta, but apparently the Court did not summon him. I now insert Ex. M

first *verbatim*, as it stands in Cadell's edition, and secondly, in the form which seems to me to be correct.

(1) Nagari paper filed and marked Ex. M, of which the following is a translation :—

ACCOUNTS.

Rs. As.

66,320 7 Amount of a bond.

50,488 7 One time.

10,920 0 One time.

61,408 7

4,912 0 Batta at 8 Rs.

60,000 0 One time darbar and other expenses.

11,362 8 A bond on account of a mortgaged house.

2,552 0 Ready cash 2,200 Rs.

596 2 On account of Dearcam Chund Ghee Tawn* 527 Rs.

1,40,804 1

8,000 0 Paid by Chitonauta at one time 1,500
1,500

45,804 1

Tomusook.

73,135 0 4 bonds 20,000, 20,000, 13,435.

Khut.

60,000 0 Three notes 20,000, 20,000.

Khut.

10,000 0 One note 10,000.

Tomusook.

1,43,435 0 Bonds 8

2,369 1 Current rupis remain due.

1,45,804 1

(Signed) MOHAN PRASAD.
,, PADMA MOHAN DAS.

* Apparently the word is *thdn*, i. e., pieces of coin.

*Translation of the Nagari account, Exhibit M (982-83), with modifications and corrections.**

Dr. *Cr.*
The Estate of Bolaqi Das in account with Maharajah Nanda Kumar.

	Rs.	As.	P.	By eight Company's bonds aggregat-	Rs.	As.	P.
I. To amount of a bond As per details—	... 66,320	7	0	... ...	... 1,43,435	0	0
50,488 7 0				Balance due to Nanda Kumar	... 2,369	1	0
10,320 0 0							
4,912 0 0 (Exchange at 8 p. o.)							
II. Darbar and other expenses	60,000	0	0				
III. Bond on account of a mortgaged house	11,362	8	0				
IV. Ready cash 2,200 and exchange at 16 p. o.	2,552	0	0				
V. On account of Dharram Chand Rs. 527 and exchange at 8 p. o.	569	2	0				
VI. Paid by Chaitanya Nath	5,000	0	0				
	1,45,804	1	0				
					1,45,804	1	0

Details.

One item Rs. 3 500
Do, " 1,500

(Signed) MOHAN PRASAD.
" PADMA MOHAN DAS.

* It will be observed that neither Bolaqi's Executor, nor Nanda Kumar, was paid in cash, and this may have deducted seriously from the value of the payment, for Bolts tells us (I, 207 note) that the Company's Bengal bonds had been discounted in Calcutta at upwards of fourteen per cent.

In making up this account, I have had to allow for errors in Howell and Cadell. It is clear that as it stands it is wrong, for the true total of the figures shown on the debit side would be 143,835, and not, as printed, 145,804. This discrepancy can, I think, be easily explained. The item set down as on account of Dharram Chand is Rs. 596-2; but if we assume that the 6 and the 9 have become transposed, as might easily happen in copying, we get an item which harmonizes with the total—for by reading Rs. 569-2, instead of Rs. 596-2, we get a reduction of 27, and this is exactly the difference between 143,835 and 143,804. The propriety of the correction becomes almost unquestionable when we find that Rs. 569-2 is exactly the value in current rupis of Rs. 527, the sum in the margin of the account, if the latter were arcots and converted at the established exchange of 8 per cent. This is the rate at which the large bond has been converted into current rupis, though the item of Rs. 2,200 has been converted at the rate of 16 rupis, that is, the rate for the conversion of sikkas.

The grand total shown, after this correction, is Rs. 1,45,804, but the details amount to only Rs. 1,43,804. I have, therefore, conjectured that the difference may be reconciled by debiting the Rs. 2,000 which Bolaqi asked Nanda Kumar to pay to Dharram Chand. This sum was to be paid out of the Company's money (*vide Ex. L*), and it is conceivable that Nanda Kumar may have paid it, and yet that it should not be entered in the account, either through oversight or because the receipt and the payment were simultaneous.* The total of the bond shown in this account (*Ex. M*) does not agree with the entry made in the books by Kista Jiban under the

* Another possible explanation is, that the figures may have been incorrectly copied from the Nagari, and that Chaitanya Nath may have paid two sums of Rs. 2,500 each.

I have allowed the remarks in the text and the above note to stand, as they illustrate the difficulties caused by the misprints in Howell and Cadell. In fact, however, the discovery of the original of *Ex. M* and its translation in the High Court has removed all difficulty. In them the figures are 569-2 and not 596-2, and the payment by Chaitanya is Rs. 5,000, one item being for Rs. 3,500 and another for Rs. 1,500. *Vide Appendix N.*

directions of Padma Mohan. The *anas* agree, but there is a difference of Rs. 3,310 in the rupis, the figures in the account being Rs. 1,26,320, and in the books Rs. 1,29,630. I cannot fully explain this discrepancy; possibly it is due to differences in the mode of calculating the exchange. The figures shown in the account are arcots, as is proved by the exchange being at Rs. 8,* and thus it appears that the amount of the bond was first converted into arcots, and, then, again into current rupis. In Kista Jiban's account the conversion was made at once from sikkas into current rupis at 16 p. c. A percentage of Rs. 2-4-10 would nearly give the difference between Rs. 60,026 and Rs. 61,408, and such an exchange would not be abnormal for arcots. I may here observe that it is difficult, and perhaps in some cases impossible, to ascertain what was the rate of exchange adopted on certain occasions. Verelst (App., p. 245) gives a diary for 3 months (June—August 1768) showing how the exchange fluctuated from day to day. In the account produced by Nanda Kumar against Hastings, a sum is shown as the amount for the exchange from arcots into *sanwat*,† but I cannot make out the exact percentage, though it is nearly three per cent.

It may be that the difference is due to something having been written off in Ex. M. It will be remembered that Kista Jiban's entries were made from the *karárnáma* and without any reference to Ex. M. It may be fairly argued, I think, that the very fact that Ex. M does not quite agree with Kista Jiban's entries or with the *karárnáma*, is evidence that it is an independent account, and not prepared in collusion with Padma Mohan or Kista Jiban.‡

* See Bolts, I, 205.

† *Sanwat* literally "years, but applied in Bengal to rupis in the third year of their currency." (Wilson, p. 460.)

‡ Perhaps the explanation is to be found in the Bengali note appended to Ex. M. in the original in the High Court. There it is said that the balance was calculated up to 17th February 1770 (8 Phalgun 1176), and that there was a *rafa* or adjustment of the account. The word *rafa* may imply that there was something remitted, *rafanama* being a common word for a deed of compromise. *Vide* Appendix N for a translation of Ex. M and of the note in Bengali.

That Ex. M is intended to represent transactions between Nanda Kumar and Bolaqi's estate, no one can doubt who is acquainted with the facts of the case and the names of persons concerned therein.

The item of Rs. 11,362-8 for a bond on account of a mortgaged house, is probably the Rs. 10,000 lent by Nanda Kumar to Bolaqi at Chāndernagore. The fact of the loan's being secured on a house, explains how the lease of a house came to be returned when the debt was satisfied. I cannot explain how Rs. 10,000-8 became Rs. 11,362-8. This may be by addition of interest, or it may be by exchange. A percentage of Rs. 13 anas 10 would give the difference exactly, and this by no means an unlikely rate of exchange for converting sanwats into current rupis. There is a curious resemblance between the Rs. 11,362-8 here shown and the item of Rs. 11,262-8 set down in Ex. Q as due to Mohan Prasad. I do not suppose they represent the same transaction, but the figures seem to point to a similarity in the mode of calculating the interest or the exchange. Rupis 10,862-8, which is the amount of an item in Mohan Prasad's sum, would be Rs. 10,000, plus Rs. 8-10 p. c.

I cannot quite explain Mohan Prasad's statement (950) that Nanda Kumar said he and Padma Mohan had made out three papers—one for Rs. 48,021 sikka, and two others aggregating Rs. 35,000 arcots. If the evidence was true, Nanda Kumar may have been referring to the *karárnáma*, which, according to Kista Jiban (1061), mentioned Rs. 35,000 on account of *tips*.*

The other two accounts to which I have referred may be dismissed with a few words.

The account of 1st October 1771 delivered in by Padma Mohan, and of which Mr. Farrer produced a copy (1024), is not in the report. Ex. Q. is filed, but though it is very long, it contains nothing about Nanda Kumar, nor does it open with a balance referring to his transactions. Mogal Calustry

mentioned in it is probably a misprint for Miguel Van Colster.

The most important thing about the paper M is, that it was signed by Mohan Prasad. There is a conflict of evidence as to when and where this was done. Chaitanya Nath, the Maharaja's treasurer, deposed that Mohan Prasad signed the account in his presence at Nanda Kumar's house. He said that there were two adjustments of accounts. First, Mohan Prasad, Ganga Vishnu, and Padma Mohan came and settled the accounts in conversation. On another day, two of them only were at the house of Nanda Kumar and signed the account. These two must have been Padma Mohan and Mohan Prasad, for he had said just before that they signed in his presence and at Nanda Kumar's house. He said that the persons present were Jai Deb Chaubé, Paresh Sudan Gupta, Mohan Prasad, Ganga Vishnu. Apparently his presence must refer to the first settlement between Mohan Das, Nanda Kumar, and himself. No previous accounts were produced as far as he saw, but the balance settled was Rs. 2,369-1, i. e., the balance shown in Ex. M. This balance was struck when the bonds were delivered to the Maharaja. This, I think, may enable us to fix the date of the account as 14th January 1770, for we know from Chaitanya Nath's evidence that the bonds, though given to the Maharaja at the settlement of account, were not indorsed over to him till the following morning, and I think we may assume that the receipt (Ex. F) was not granted till the transaction had been completed by the indorsement of the bonds. Ganga Vishnu would have been an important witness about the settlement, and the defence was anxious to call him, but were unable to do so. Jai Deb Chaubé was not examined or cross-examined on the point.

Mohan Prasad's account of the affair is given at (982) and (1044). He admitted his signature on Ex. M, but professed not to know if the other was Padma Mohan's, and said that he did not think that the body of the document was in Padma Mohan's handwriting. Fortunately, Lachman, the

younger brother of Padma Mohan, was able to prove that both the signature and the whole document were in his brother's handwriting, and Kista Jiban deposed to the same thing, so that Mohan Prasad was discredited by two witnesses. Mohan Prasad denied that he signed the paper at Nanda Kumar's house, or that the account was settled there in his presence. What he said was that the paper was drawn out in order to show it to Bolaqi Das' widow. He said that he signed it at his own house (1046), and 18 or 20 days after the bond (qy. bonds ?) was received by the Maharaja. But even this will not make the transaction later than the first part of February 1770, and consequently many months before any accounts were filed in the Mayor's Court. The fact that the paper was, according to Mohan Prasad, shown to the widow, also enables us to fix its date within moderate limits, for the widow retired to Benares a month or two after receiving the Company's bonds (1026).

¶ Mohan Prasad was asked why he signed the paper, and he replied, "When Bolaqi Das' widow called me to her, she observed my signature was not to it; upon which Padma Mohan Das observed that the widow of Bolaqi Das had taken notice of my signature not being to it. He said, here is no name, no tips, no account; only put your name to this. Why do you make any doubt about it? Only sign it, and I will give it you back."

Then he was asked if it was Maharaja Nanda Kumar's account, to which he replied by asking if they could find his name to it. Then he denied that it was his account. Further on in the report, however, he said, "It is Maharajah's account, the darbar kharach (expenses) is there, he took the bond for Rs. 1,29,000, and obtained Rs. 60,000 for darbar expenses."

Mohan Prasad's attempt to get over Ex. M seems to me very suspicious. The omission of Nanda Kumar's name from it may have emboldened him to deny that it was Nanda Kumar's account, but he could hardly venture to deny that it related to Nanda Kumar's transactions. The mention of a

bond for Rs. 66,320 - 7, of the name of Dharam Chand, Balaqi's former partner, of Chaitanya Nath, and of the eight Company's bonds, was sufficient to put this beyond doubt. Mohan Prasad made a similar defence in the Civil Court. There, too, according to Rous, as quoted by Sir J. Stephen, he admitted that he had signed the paper, but denied that it was an account with Nanda Kumar. That the paper filed in the Civil Court was Ex. M is shown by Roti's account of it as an adjusted account, showing a small balance in Nanda Kumar's favour. We know, too, from Mohan Prasad, that Ex. M was filed in the civil suit, for he tells us that he saw it there (1046).* I do not believe Mohan Prasad's story about his signing it afterwards at his own house and merely to satisfy the widow. I prefer to believe Chaitanya Nath: 1st, because Mohan Prasad's signature is above Padma Mohan's (983), which is not likely to have been the case if he signed afterwards; 2nd, because if the paper was with Padma Mohan and at Mohan Prasad's house, I do not see how Nanda Kumar came to have possession of it; and yet we see that it was he who filed it in the Civil Court. Nor do I believe for a moment that Mohan Prasad would sign an incorrect paper to please the widow. At least, if he did so, he would have taken care not to let it go out of his possession. He evidently was conscious of this improbability, for he said Padma Mohan promised to give it him back. Why did he not insist on this being done?

My impression is, that Mohan Prasad wanted to get Ex. M confounded with the far later account filed by Padma Mohan, and that he was successful in this respect with the Chief Justice. The latter says nothing definite in his charge about Ex. M or about Chaitanya Nath's evidence, and only speaks, apparently, of the accounts filed in the Mayor's Court. There were two such accounts, *viz.*, one signed by Padma Mohan alone, and another (Ex. Q) which he and Mohan Prasad signed (1023). The first of these two accounts was apparently shown to the widow

* The original in the High Court proves that it was filed in the civil suit, for it is en faced "B, exhibited in the Diwani Adalat, October 5th, 1773. C. W. B. R. (Boughton-Rous), President."

in envelopes sealed by Bolaqi ; he had a copy of the *karár-náma* which had been compared with the original ; he had proof that the original was missing or was in the hands of Mohan Prasad ; he had an adjusted account signed by Mohan Prasad early in 1770 (Ex. M), and he had the entries made by Kista Jiban. What was there on the other side ? Some five witnesses, of whom only four were important, Kamáladdin, Mohan Prasad, Sadaraddin, and Naba Krishna ; the first the *farzi* of Hastings' banyan,* the second the signer of Ex. M, the third a hanger-on on Barwell, the fourth an old banyan, and a man of vile character.

Even Sir J. Stephen admits (Vol. II, 52) that the case for the prosecution was far from being overwhelmingly strong, and that it was little more than a *prima facie* case. But he finds a peculiar line of argument upon this. His view is,

* Kamáladdin had two farms ; one was at Hijli, and with this apparently Kanta Babu had nothing to do. The under-renter, and, according to Barwell and the Supreme Court, the person really liable for the rents, was one Basant Rai.

The other was a farm of 401 salt works, or Thika Khalaris, as they were called. These had belonged to Kanta Babu, who held them under the name of his son Lok Nath Nandi. They were afterwards farmed to Kamáladdin, and Hastings declared that his banyan had no longer any connection with them, and that indeed he had been seriously injured by their being given to Kamáladdin. But it is clear from Kamáladdin's own petition (1100) that Kanta Babu retained his interest in them, for the petition states that Ram Prasad Mukarjya under-farmed the Thika Khalaris from Kamáladdin on account of Babu Leekenace and Nundee, giving Mr. Archdeakin as his security. Now there can be no doubt that this extraordinary name, Leekenace and Nundee, is a corruption of Lok Nath Nandi, the son of Kanta, who was then a boy of 10 or 12 years of age.

Kamál's petition of 13th December 1774 (that presented by Hastings to the Board) refers to Kanta Babu's salt, and there are papers in the Board of Revenue Office showing that 26,000 maunds of salt belonging to Kanta Babu were deliverd to him, because he had made them before Kamál got his farm. There is also a report on the subject of Kamáladdin's debts by the Provincial Council of Calcutta, printed in the Bengal Appendix (No. 32F, 642). It is dated May 12th, 1775, and shows that a balance of about 1½ lakhs of rupis is due by Kamál. The report mentions that 26,000 maunds had been given up by the Governor and Council to Lok Nath Nandi, and Kamál got credit accordingly, the demand against him being reduced from 100,000 mauns to 74,000.

that, as the case was weak, it follows that it was a *bond fide* private prosecution, and that Hastings had nothing to do with it ! Most people, I should think, would be inclined to say that if the case was weak, and yet the prisoner was convicted and hanged without any attempt by the Judges or jury to save him, it was probable that the whole affair was pre-arranged and that the trial was a farce. But there is nobody like your controversialist with a bad case for seeing a thing upside down.

Sir J. Stephen argues that if Hastings knew of the civil proceedings, he would have put them in. This, he says, because Farrer, speaking some thirteen years afterwards, said the civil proceedings were not altogether favourable to the defence. But Mohan Prasad knew of these proceedings if Hastings did not, and if he was a *bond fide* prosecutor, as Sir J. Stephen says, why did he not put them in ? Nobody says that Hastings or his friends had a minute knowledge of the civil proceedings, but that he knew of the suit appears clearly from the fact, vouched for by Impey, as being notorious in Calcutta, and which is alluded to by Price, that when Palk confined Nanda Kumar, Hastings directed his release. Hastings' motive for this is clear enough. Palk confined Nanda Kumar in June or July 1772, and at that time Hastings was employing Nanda Kumar to expose Mahomed Reza Khan. It was in July 1772 that Nanda Kumar's son, Guru Das, was made Diwan.



CHAPTER IV.

THE CIVIL SUIT.

THE civil suit was instituted in the Court of Kachahri. This was a country or Company's Court, and not a Court of record, or established by Royal Charter, as was the case with the Mayor's Court. Bolts (Vol. I, p. 80) describes it as follows: "The Court of Cutcherry, on its present establishment, is composed of the Company's servants under Council, any three of whom, their President being one, upon days stated at their own option, meet for the hearing, trying, and determining in a summary way all matters of meum and tuum to any amount, wherein only the native inhabitants of Calcutta are concerned. The mode of proceeding is indeed as summary as possible. The plaintiff and defendant, with their respective witnesses, being summoned, the Court hears what they have to offer and prove, *vivā voce*, and immediately proceeds to decree in such matters as do not admit of much contest. From the decisions of this Court the Company have directed appeals to lie finally to the Governor and Council; which, however, is seldom done, except in matters of the greatest consequence, as it is in those cases the general practice of the Court, when not unduly interrupted, to have every cause determined by arbitrators or umpires chosen by the parties, or with their consent, whose decision is final, and made a decree of the Court.*" It appears from the evidence of Yar

* Cowell tells us nothing about the Court of Kachahri, or even about the Diwani Adalat which succeeded it. Like many other volumes of Tagore Lectures, his is poor value for Rs. 10,000. It appears from Holwell's Tracts (p. 178) that the Court of Kachahri was reorganized in 1758. Formerly it was the Zemindar's Court, and was presided over by the Collector of Calcutta. Holwell presided over the Zemindar's Court from July 1752 till the capture of Calcutta.

Mahomed who was a witness in the cause, and so was likely to remember, that the suit against Nanda Kumar was instituted about the middle of 1772. Speaking in June 1775, he said that the suit had been instituted about three years before ; this, too, would agree with Kamáladdin's statement that Mr. Palk confined Nanda Kumar about three years ago (937).

The suit seems to have been instituted by Ganga Vishnu, though it is very likely that the Gosain had a hand in it Nanda Kumar was the defendant. It was for Rs. 1,29,630-7 said to be due to Bolaqi's estate on account of Company's bonds, so that it is clear that the suit was based on the entries made by Kista Jiban under the orders of Padma Mohan.

The Court of Kachahri was then presided over by a civilian of the name of Robert Palk, and it appears that he arrested Nanda Kumar for contempt of Court. This is described by Price in his peculiar style. He says that "a suit was commenced against Nanda Kumar in the country courts ; a spirited young gentleman, then President of the Cutcherry, sent and arrested the Raja for contempt of Court, and without paying any regard to the solicitations of the Governor of Bengal for the time being (not by committing to disgrace a nobleman and brahman of his high order), he sent him to the common prison of his Court. The commitment being only for contempt, the Raja, by making proper concessions, got out again and the suit went on." Impey referred to this before the House of Commons, saying that "it was in evidence that Mr. Palk, Judge of the Adalat, had confined (Nanda Kumar), and that it was notorious that Mr. Hastings had ordered him to be released. This of itself was sufficient to prevent any native inhabitant of Calcutta from commencing a prosecution against him." Before I proceed to notice Sir James Stephen's remarks on Impey's statement, I beg to call the especial attention of my readers to this last sentence. Is it not a plea by confession and avoidance that no attempt was made to prosecute Nanda Kumar before May 1775 ?

Sir J. Stephen's remark is as follows :—" Palk's evidence, if he gave any, is not in the report of the trial. The evidence

of Farrer and Boughton-Rous given before the Impeachment Committee after Impey's defence does not mention this, and is hardly consistent with it. I think, therefore, that Impey must have been mistaken in his assertion."

This is a proof, if any is wanting, of the hasty manner in which Sir J. Stephen has got up his case. Palk* did not give evidence, but Kamáladdin did, and he was sufficient authority for Impey's statement that Palk confined Nanda Kumar (937).

The Court of Kachahri was superseded by the Civil Court, which was established under the regulations of August 21st, 1772. Mr. Boughton† seems to have been its first Judge. I have not seen Mr. Boughton's evidence since writing my articles on Warren Hastings (in 1877), and I must therefore rely on Sir James Stephen's account of it. It appears that he said the Civil Court was instituted in December 1772. No doubt some time would elapse before the August regulations were carried into effect, and the intervention of the Durga Puja holidays would prevent much work till November or December. Boughton said that Mohan Prasad was Ganga Vishnu's attorney. I find, too, from an old note of my own, that he described him as being a very litigious man. Boughton said that Nanda Kumar set up an account stated to be adjusted between himself and the representatives of Bolaqi Das, and shewing a small balance in his favour. No doubt this was Ex. M, which shows a balance of Rs. 2,369 in Nanda Kumar's favour. He further said that the account had been signed by the plaintiff and Mohan Prasad, but that they denied that it was an account with Nanda Kumar. Here Boughton's memory must have failed him, and, indeed, the wonder is that he remembered so much. The account was

* Palk was probably a son of Sir Robert Palk, who rose from being a Company's Chaplain at St. David, to be Governor of Madras. The death of his wife Lucia in 1772 is chronicled in the Bengal Obituary.

† Boughton apparently did not always use the surname Rous or Rouse. See Bolts' papers. He was no doubt connected with the Sir Theodosius Boughton, who was poisoned by his brother-in-law with laurel water.

not signed by Ganga Vishnu, but by Padma Mohan. I cannot understand their denial that the account was one with Nanda Kumar. His name may not have been on it, but if they really said that it did not relate to Nanda Kumar's dealings with Bolaqi Das, they must have lied. It is perfectly clear from the mention in it of the bonds, and from the occurrence of the darbar expenses, the jewels-bond, Chaitanya Nath, &c., that it was Nanda Kumar's account. • Probably they said that it was not an adjusted account, though it is not easy to see how they could have said even this when the names of Mohan Prasad and Padma Mohan were on it.

The suit does not seem to have been actively proceeded with in 1773. Price says, with his usual coarseness, that this was due to Boughton's being corrupt, and refers to a case in which he says that the Supreme Court made Boughton disgorge Rs. 3,000, which he had taken from a litigant in whose favour he had given a decree for Rs. 8,000. (Letter to Burke, p. 63.) It appears, however, that one reason at least of the delay was that the Court found it necessary to investigate the antecedent transactions which related to the deposition of Company's bonds in the hands of Nanda Kumar, and called on the plaintiff for a more minute explanation of his demand. He accordingly sent in an amended bill of complaint in February 1774, in which the circumstance of three fictitious bonds was alleged. Sir J. Stephen says that this must mean to refer (*sic*) to fictitious bonds from Bolaqi Das to Nanda Kumar. No doubt, and probably what was meant were the three papers which Mohan Prasad said Nanda Kumar told him that he and Padma Mohan had drawn out, *viz.*, one for Rs. 48,021 sikka, and other two aggregating Rs. 35,000 arcots (950). Thus then the forgery of the jewels-bond does not seem to have been distinctly asserted even in the Civil Court till 1774.

After the Court had heard evidence, it recommended arbitration; because the plaintiff desired it, because the case was intricate, and depended materially on Nagari accounts, and because if a decisive opinion had been expressed in favour

of plaintiff, there would have been an implied charge of forgery against Nanda Kumar, also because one of the native members of the Court was known to have been recommended to his office by Nanda Kumar. Boughton might have added that a resort to arbitration was expressly recommended to the Civil Court in all cases of disputed accounts by Article 22 of the Regulations of August 1772. (Harington, II, 5.)

Boughton said further, that Nanda Kumar at first made a difficulty about referring the case to arbitration, but consented at last, and that even then the *parties*, as far as Mr. Rous remembered, could not agree about arbitrators, and whilst matters were in this suspense, the Supreme Court arrived in Bengal. Commenting upon this, Sir J. Stephen says : "In a word, litigation which had lasted upwards of two years was brought to a standstill by the reluctance of the Court to proceed in a course which might cast upon Nanda Kumar the imputation of forgery, and by Nanda Kumar's refusal to agree upon arbitrators after a reluctant consent to refer the matter had been obtained from him. It is not at all surprising that in these circumstances the attorney for the plaintiff should recommend his client to adopt the shorter and sharper course of prosecuting Nanda Kumar criminally." My first remark here is, that I do not see where Sir J. Stephen gets his authority for saying that it was Nanda Kumar who would not agree about arbitrators. Rous says that the "parties" could not agree, and this might mean the plaintiff. Then, again, I do not see why Sir J. Stephen should speak of Mohan Prasad as the plaintiff in the case and as Mr. Driver's client. Mohan Prasad was not the plaintiff; and Ganga Vishnu, and not Mohan Prasad, was Driver's client. As Impey remarked in his charge, Mohan Prasad does not seem to have been a party to the civil suit.*

* Boughton-Rous gave evidence about the civil suit before Touchet's committee in 1781, and there stated that, after some examination, the Court of Adalat had repeatedly recommended arbitration to both parties, but they could not agree about the arbitrators, and, to the best of his memory, that was the difficulty. He said nothing about a reluctance to try a case which

Rous' statement that an amended bill of plaint was filed in February 1774, though it is possible that there was a mistake of a month here, is very important, as it enables us to understand Driver's petition to the Mayor's Court of 25th March 1774. Sir J. Stephen refers (I, 96) to this petition in support of his allegation that there was an attempt at a *criminal prosecution* many months before the Supreme Court was established, but it seems to me that it is evidence the other way. The following copy of the petition will enable my readers to judge for themselves : "25th March 1774. Mr. Driver, attorney for Ganga Vishnu, read a petition from him, stating that by the order of the Court all the papers belonging to the estate of Bolaqi Das were deposited in the Court, among which were 28 bonds, receipts, and vouchers ; that he had commenced suits in the *Diwani Adalat*, and wanted the said bonds, receipts, and other vouchers *in order to establish the same* ; and praying that they may be delivered to him, giving the usual receipt for the ~~same~~." The Court deferred the consideration of the said petition till next Court-day. • "Ordered, that an officer of the said Diwani Adalat be permitted to attend at the Register's office to inspect the books, papers, and vouchers aforesaid." There is no statement here that Driver's motion was finally rejected. The terms of the Court's order imply that the motion was considered to be one which should properly have come from the Civil Court, and I should think that the papers would certainly have been given up to that Court if a motion to that effect had been made by the President. It does not appear, however, that Mr. Driver ever asked the Civil Court to send for the papers. If the Mayor's Court absolutely refused to give up the papers, Driver could have appealed to the Court of Appeals, and the Mayor's Court was not a King's Court or an independent Court,

might lead to Nanda Kumar's being charged with forgery. Farrer also gave evidence before the committee, and so did Captain Price and William Hickey. (Was the last a relation of the Hickey of Hickey's *Gazette*? Possibly not, for the latter spelt his name Hicky.)

so that it could have refused submission. The application for papers was renewed before the Supreme Court (to which the muniments of the Mayor's Court had been transferred by the Regulating Act) by Mr. Farrer as advocate for Ganga Vishnu.

This application was made on 25th January 1775, and again on the 30th idem. It was opposed by Mr. Brix as advocate for the father and brother of Padma Mohan Das, and the order given was that the Register should, with the assistance of Hazari Mal and Kashi Nath Babu, examine the papers, separate those of Bolaqi's estate from those of Padma Mohan's, and deliver the first to Ganga Vishnu, and the latter to Sib Nath, father of Padma Mohan. There was some delay in this being done in consequence of Hazari Mal and Kashi Nath's not attending, but eventually Mr. Sealy, the Register, separated the papers by the agreement of the parties, and delivered Bolaqi's to Ganga Vishnu. Sir J. Stephen says (I, 95) that the date of the delivery of the papers does not appear, but it is given in the report, in Mr. Sealy's evidence, who says that it was about the 27th April.* Padma Mohan Das' papers remained in Court after the separation (*vide* evidence of his brother Lachman, 1034).†

I have now brought the history of the case down to close upon the institution of the criminal proceedings. It will be seen that Driver asked for the papers for the purpose of civil litigation, and not for the institution of the criminal proceedings. This also appears to have been Farrer's reason for applying for them. Had he asked for them in order to prosecute Nanda Kumar for forgery, he would hardly have

* See also (1038), where it is said that the papers were separated on April 27th.

† It is a singular circumstance that the proceedings of the Mayor's Court should have been sent for by the foreman of the (grand?) jury, and been read at his *desire*, in order to prove that Ganga Vishnu had always been treated as a weak man, incapable of transacting his own business. Granting that the *ex parte* proceedings of the Mayor's Court prove this, I do not see how it was the business of the foreman to suggest evidence to help the prosecution.

become Nanda Kumar's advocate in May. We do not know all that took place in the Civil Court, but we know that Yar Mahomed and Kista Jiban gave evidence in favour of the Maharaja (1014 and 1062). We also know that Yar Mahomed's evidence was given before Mr. Rous, which shows that that gentleman took evidence in the case. This must have been in December 1772 at earliest. Further, Yar Mahomed at all events, if not also Kista Jiban, must have been a witness for the defence, and he could hardly have been examined until the case for the plaintiff was closed. Now it is a very extraordinary circumstance, and one which to my mind is almost conclusive against the genuineness of Kamáladdin's evidence, that he was not examined in the civil suit! It seems incredible that Ganga Vishnu or Mohan Prasad should have omitted to call him, if what he said at the forgery trial was true. According to Sir J. Stephen (I, 118), Kamál's evidence was so important, that Nanda Kumar was willing to confess to him, in order that he might get the benefit of it. Why then, when Kamál proved virtuous and refused to give false evidence even at the risk of losing his farm from inability to produce security, did not Mohan Prasad call him? Kamáladdin tells us (937) that he first heard of his name being forged from Mohan Prasad, and that this was two months before Mr. Palk confined Nanda Kumar, and two months before he got his post, which was three years previously. Consequently he must have heard of it in April 1772.* From Mohan Prasad, Kamáladdin said he went to Nanda Kumar, who confessed the forgery to him (!) and asked him to give evidence before the gentlemen of the Adalat. Then he went and told Khwaja Petrusse and Sadaraddin. Kamál wanted to complain about the forgery to Hastings and the Adalat, but Sadaraddin advised him not to do so, as Hastings had given Raja Guru Das the *khilat* for the office of Diwan. This would make July 1772 the time of the conversation, for

* He was then a poor man out of employment.

it was in that month that Raja Guru Das was appointed. It is, of course, suspicious that he should have been so long in telling Sadaraddin, or in thinking of complaining, but at all events he knew all about the forgery, and had thought of complaining long before Mr. Rous had charge of the Adalat (December 1772). In the course of the same deposition Kamáladdin made the strange statement that he had once seen the bond with Nanda Kumar. His words are : " Mohan Prasad first told me that my seal was to a bond, and then the Maharajah himself told me he had put my seal to a bond; *I saw the bond once before himself.*" If this is true, he must have seen it not later than the first half of January 1770.

But it seems clear that it was either false or totally inconsistent with his other evidence. If Kamál saw the bond with Nanda Kumar, he must have done so before Nanda Kumar cancelled it and delivered it to Ganga Vishnu and Padma Mohan. Why, then, should he be surprised in 1773 at what Mohan Prasad told him, or go to Nanda Kumar and ask for an explanation ? He must have known for about three years that his seal was on the bond ! Why did this not strike the Judges, and why did they not question him about the inconsistency ?

My authority for the statement that Kamáladdin did not give evidence, is a letter written by Nanda Kumar to the Council on 8th May 1773, that is, only two days after his commitment to jail. In this very important letter Nanda Kumar says that he has been committed (to jail) on the evidence of witnesses who were not produced or even mentioned in the Civil Court, although the case had been pending there for three years. Now we know from Lemaistre and Hyde's warrant to the Sheriff, that Nanda Kumar was committed on the evidence of Kamáladdin, Mohan Prasad, and others. There is also no assertion by any of the witnesses for the prosecution in the forgery case that they gave evidence in the Civil Court. I may add here that the letter *

* I shall give it in full later on.

which I have just quoted contains ample evidence that Nanda Kumar knew who his prosecutor was, and so disposes of Sir J. Stephen's remark (I, 183) that Nanda Kumar had no definite knowledge or distinct suspicion on the subject.

It is important to bear in mind that the jewels-bond was not the only thing in dispute in the Civil Court. This constituted little more than half of the claim, for there were Rs. 60,000 for darbar expenses. There was thus a good foundation for a compromise, or a reference to arbitration, and I do not think that it would be fair to infer anything against either party for being willing to submit to it. But it certainly seems to show that Mohan Prasad was not then anxious for a criminal prosecution, and also that either Kamáladdin's story was not invented then, or that Mohan Prasad did not think very much of his evidence. According to Kamál, Mohan Prasad knew all about the evidence he would give while the suit was still in the Court of Kachahri, and yet we find him willing to refer the matter to arbitration.

Another very important thing to be remembered is, that the civil suit was never decided. It was actually pending when Lemaistre and Hyde issued their warrant. I do not know if this rushing into criminal proceedings arising out of a pending civil suit was illegal then (it would be so in India now, and this has been the rule for many years), but surely it was most rash to take up the case criminally, and to hang the defendant before the civil suit had been tried out. It was early found in India that much evil was caused by allowing parties to civil suits to institute charges of perjury and forgery, and the sanction of the Civil Court was made necessary. (See Reg. III of 1801, abstracted in Harington, I, 348, and Construction of the Sadr Diwani of 13th July 1827.)

This point was noticed by the Select Committee when they said, with reference to Nanda Kumar's case, that "the criminal fact alleged was at that time, and had long been, in a course of examination in a civil suit, the event of which was to be decided by the authenticity of the instrument said to have been forged."

Impey referred in his charge to the fact that neither side had thought fit to produce the proceedings in the civil suit. Sir J. Stephen quotes (I, 168 note), Farrer's reasons for not producing them, and says they go far to show that his client was guilty. Elsewhere (I, 177) he intimates that Farrer believed his client to be guilty. This seems to me inconsistent with Farrer's statement that he relied on the inapplicability of the statute, and on the merits of the case itself, for procuring his client's acquittal. We have, however, an account of the civil suit from a higher authority than Farrer's, *viz.*, from the Judge who heard the case, and his account was that the evidence in support of the claim was inconclusive. His (Rous's) words, as given in Elliot's speech, are as follows:—

"The suit on the part of Mohan Prasad against Nuncomar, and the transaction itself, seemed, in the judgment of the Court, defective in point of regularity, and the evidence in support of it inconclusive; the cause was of an intricate nature, and depended materially on accounts carried on in neither of the three languages understood more or less by the Board, but in the Nagari language, in which no member of the Board was a competent judge; and there was a darkness in the whole transaction which, after much careful inquiry, prevented him from forming any decision satisfactory to his own mind; and therefore he recommended that the cause should be left to arbitration." Upon this, Elliot remarks, "these circumstances, however, formed no subject of doubt or hesitation in the mind of Sir Elijah. He declares that no doubts upon the question did exist." We learn from Montriou's work on the Hindu Will (pp. 3 and 55) that the decree passed on an award of arbitrators by the Court of Kachahri was appealable on the merits, so that, apparently, even if the arbitration proposed in Ganga Vishnu's case had taken place, litigation would not have been at an end.

Continuing his observations on the civil suit, Sir J. Stephen says (I, 92):—"His (Nanda Kumar's) conviction for the criminal offence would not indeed operate as a verdict in his adversary's favour in the civil action, but if his goods were for-

feited, it would give him practically an irresistible claim on the Government, and if the law of forfeiture was not applied, the claim, after Nanda Kumar's execution, would practically be established against his representative." Now, in the first place, his claim would only have been established for about Rs. 70,000 out of Rs. 1,30,000. And secondly, it is a curious comment on this reasoning to find that Nanda Kumar's property went to his son (Stephen, I, 265), and was neither forfeited nor made over to Ganga Vishnu.

It is interesting to watch the slow progress of truth and to see with what difficulty she succeeds in driving Duessa from her fastnesses and starting-holes. For a long time the favourite story was, that there had been a criminal prosecution of Nanda Kumar in the Mayor's Court, and that this was brought into the Supreme Court in due course, in consequence of all the business and the records of the Mayor's Court being transferred to the Supreme Court under the Regulating Act. When this could no longer be maintained, it was said that, at all events, there was a civil suit in the Mayor's Court, and that this turned on the question of the forgery. We now find, however, that this story too is incorrect, that the Mayor's Court had never anything to do with Nanda Kumar, and that its only connection with the affairs of Bolaqi or Ganga Vishnu was in its capacity as a Court of Probate. In fact, there could not have been a civil suit in the Mayor's Court unless Ganga Vishnu and Nanda Kumar had consented to have it there, for only in that case would the Mayor's Court have jurisdiction. As there was no such consent, the suit was brought in the country Court, that is, in the Court of Kachahri.

The limitation in the jurisdiction of the Mayor's Court was well known to Captain Price, and he gives it as a reason why the Mayor's Court was not resorted to. He is a grotesque and even ruffian-like author, but he had local knowledge, and was a contemporary, and so he wrote "our Mayor's Court from the nature of their charter could not take cognisance of civil suits between natives; this, and the

idea that a man who had possessed himself of other people's money in the manner the Rajah had, could only be obliged to return it, is supposed to have prevented an earlier appeal to our criminal law." Here Price, who solemnly calls upon Rous and Farrer to contradict him if he makes any mistake, goes on to describe the meeting of the legatees and the determination to prosecute, and it is important to notice that, according to him, this was all done on a sudden, after the Company's lawyer (Durham) had gone to them with the bond. Now that must have been after the 27th April 1775.

It is evident (I, 90) that Sir J. Stephen was aware that the suit was in the Civil Court and not in the Mayor's Court, but he falls back into the old error (I, 118) when he speaks of the suit's going on in the Mayor's Court from 1772-74. It almost appears from the tone of Farrer's remarks (I, 94) that Farrer was, in 1788, under the same mistake.



CHAPTER V. THE GENESIS OF THE PROSECUTION.

I MUST now say a few more words about my second point, *viz.*, that there was no attempt at a prosecution before May 1775. We have seen that no such attempt was ever alleged by Mohan Prasad or Sir E. Impey. The resource of most writers has been the supposed case in the Mayor's Court, but as it has been successively shown—1st, that there could be no criminal case in that Court; and 2nd, that there was not even a civil suit there, a new point has been raised, *viz.*, the evidence of Mr. Farrer. This evidence I understand Sir J. Stephen to charge me with knowingly passing over (I, 94). I do not think that the passage was overlooked by me in 1878, for I find a reference to it in my notebook. My view, if I remember rightly, was, that Farrer's statement was worth nothing. It was made 13 or 14 years later about a conversation which he had with Mr. Driver in Nov. 1774.* Farrer said that Driver, the attorney of Ganga -Vishnu, told him that he had advised his client to take criminal proceedings, that Mohan Prasad had agreed, and that he (Driver) had therefore applied for papers in March 1774. The story therefore depends not only upon Farrer's power of recollection, but also on the veracity and memory of Driver. Farrer, speaking in 1788, may have mistaken or have forgotten what Driver told him in Nov. 1774, and Driver may

* Farrer told the House of Commons Committee that he arrived in India two or three days before the Judges. It would seem, therefore, that Impey was incorrect when he wrote to the Earl of Rochford that Col. Monson took him out as his secretary, for the Judges and Members of Council arrived at Calcutta together. He is not mentioned by Macrabilie as a fellow-passenger, and it is not likely that he was at the second mess.

then have forgotten what took place in the previous March. That he did forget or misstate the facts is proved by the contents of the petition of March 25th, 1774, which recites that Driver wanted the bonds for prosecuting *civil suits*. There is no clear order refusing him the originals, and I do not understand why he should have been offered copies when Mohan Prasad had them already. Moreover, Mohan Prasad was not Driver's client. The evidence, then, is a hearsay statement made by A of what B told him 14 years earlier about the intentions of C, or rather of C's agent D, and it is in opposition to contemporaneous writing. Surely if ever there was a case in which written testimony should be preferred to slippery memory, this is one. It is to me inconceivable that if Mohan Prasad had really attempted a criminal prosecution before, and had taken any steps for the purpose, he should have failed to mention the fact when he was examined on the point at the trial (1043).

There is an *a priori* argument against Mohan Prasad's voluntarily coming forward as prosecutor, which is to my mind of considerable weight. This is the fact that he signed the petition of March 1765 for the pardon of Radha Charan Mitra. The petition is printed by Verelst (App., 1770), and is strongly worded.* It recites the general consternation, astonishment, and even panic with which the natives of all parts, under the domination of the English, are seized by this example of Radha Charan Mitra; that they find themselves subject to pains and penalties of laws to which they are

* The petition is also published by Mr. Long (Selections, 430) and the names of the 95 signatories are given. Mohan Prasad's name is *third* on the list, the first two being Hazari Mal and Kashi Nath. Raja Naba Krishna's (then only a munshi)¹ appears also, which may account for his unwillingness to have Nanda Kumar hanged. Nanda Kumar's name does not appear. It was hardly possible that he should have signed, for he was in Murshidabad when the sentence was passed in Feb. 1765, and when he was sent down next month to Calcutta, he was under a guard of sepoys! The story that his name was on the petition appears to have been started by Price. (Letter to Burke, 73.)

¹ Clive procured for him the title of Maharaja a few months afterwards.

altogether strangers, &c. Is it likely that, after signing such a petition, and therefore well knowing what the punishment for forgery was by the English law, he would voluntarily* prosecute under that law an aged Brahman with whom he had formerly been on terms of strict friendship, and who, he said, had loved him as his son (1047).

No one can tell when the thought of prosecuting Nanda Kumar first occurred to Hastings or to Mohan Prasad, but it is possible that it arose almost as soon as the Judges arrived in India. If Ram Nath is to be believed, which is very doubtful, Mohan Prasad was talking of prosecuting Nanda Kumar in Aswin (*i. e.*, September - October) 1774. Nanda Kumar and Hastings had always been antagonistic to one another, and the feeling of mutual aversion must have been embittered by the failure of the prosecution of Mahomed Reza Khan and the downfall of Nanda Kumar's expectations.

Sir J. Stephen speaks of Nanda Kumar's deadly hatred for Hastings, and says the feeling *may have been* returned by Hastings, as if the point was a doubtful one. Perhaps his doubt will be removed if he refers to a letter written by Hastings in 1788, that is, thirteen years after Nanda Kumar's death, and when the hate might be supposed to have been in some measure appeased. There Hastings says: "I was never the personal enemy of any man but Nuncomar, whom from my soul I detested even when I was compelled to countenance him." (Gleig, III, 338.) No doubt the arrival of the Judges and the Councillors, and the hopes and fears incited by the new order of things, blew the smouldering animosity into a flame. A week after the arrival of the Members of Council, and consequently about the 25th October 1774, Nanda Kumar asked Hastings to introduce him to the new powers. This request must have been gall and wormwood to Hastings, especially if it was made just after the meeting of Council on 25th October, when, as we know, the quarrel about the Rohilla war began. So Hastings tauntingly replied: " You

* Radha Charan was only a Kayasth. The petition states that he was recommended to mercy by the jury.

have contracted a friendship with my enemy, procure an interview by his means." And then he added the menace, "I shall pursue what is for my own advantage, but in this your hurt is included; look to it." The enemy here meant was Mr. Joseph Fowke, who was in India when the *Anson* and *Ashburtham* arrived, and who went down the river to Khijeri to meet General Clavering.

On 25th March 1775, Hastings wrote to his agents, Graham and Macleane: "Goring is employed as their (the Members of Council) agent with Mahomed Raza Khan, and Fowke with Nanda Kumar. I believe you both knew before you left Calcutta that it was reported, and currently believed, that he* had been many days in close counsel with Nanda Kumar before the arrival of the transports, and carried down with him a long list of malversations to present to the new Members. I suppose it is the same with that which Nanda Kumar himself has since presented."

After Nanda Kumar's request for an introduction to the Councillors, the quarrel between him and Hastings went on increasing; and on 11th January 1775, Hastings turned him out of his house and forbade him ever to come again. Sir J. Stephen seems to doubt if this took place, and if it occurred before Nanda Kumar brought his accusations; for he says (I, 211 note), "By Nanda Kumar's own account this preceded, and was the cause of, Nanda Kumar's accusation of Hastings." But Hastings admitted in evidence that he had dismissed Nanda Kumar from his house, and this must have been before the accusation, for Nanda Kumar would certainly never venture near the house after the 11th March.

Besides this, there is a letter of Hastings, dated 25th February 1775, and consequently more than a fortnight

* Gleig (I, 516). It is printed "I," but it is clear that Fowke is meant. Francis refers to the supposed compact between Nanda Kumar and Fowke. He says (II, 49) that he suspects Joseph Fowke had laid a plan with Nuncomar to take possession of them as soon as they arrived, and through them govern the country. Price too speaks of Clavering's being visited as soon as he arrived in the river by an old and silver-headed sage of his former acquaintance (Fowke).

before Nanda Kumar stood forth as his accuser, which corroborates Nanda Kumar's account and shows how bitterly Hastings felt towards him : ("Nanda Kumar, whom I have thus long protected and supported, whom, against my nature, I have cherished like a serpent, till he has stung me, is now in close connexion with my adversaries, and the prime mover of all their intrigues, and he will sting them too, or I am mistaken, before he quits them. *I have expelled him from my gates*, and while I live will never re-admit him ; yet I will support his son, and the arrangements formed at the city (Murshidabad) till the Company's orders empower us to dissolve them. I hear that this also is intended by the majority and at his instigation."

The fact is, as Nanda Kumar himself said, he was driven to accuse Hastings by seeing that the latter had become his enemy, and was consorting with Mohan Prasad and Jagat Chand. Jagat Chand was Nanda Kumar's son-in-law, but was violently hostile to him. His intimacy with Mohan Prasad may be inferred from Nanda Kumar's letter, and also from a passage in Durham's evidence (1039), where he says that he showed the forged bond to Manahar Mitra in the presence of Jagat Chand and Mohan Prasad. His hostility to Nanda Kumar is proved by Nanda Kumar's letter, and is referred to in a letter of Hastings written so far back as April 1772. Jagat Chand was Naib to Guru Das, or at least to the Nizamat, and Hastings writes that Nanda Kumar's son and son-in-law (Guru Das and Jagat Chand) were more ready to counteract each other's designs than to join in a plot to hurt the Government. (Gleig, I, 332.)

Sir J. Stephen says that prosecutions such as that of Nanda Kumar for forgery grow from deep roots. No doubt, but the roots here were deep as Tartarus. The enmity between Nanda Kumar and Hastings began in 1758; and Hastings, writing in 1773 (Gleig, I, 270), says that when he was in Bengal before, *i. e.*, up to the end of 1764, he rejected every offer of reconciliation with him. He adds—"I still dislike him, although I countenance and employ him." Again,

in March 1774, he writes of Nanda Kumar's crooked politics and of his being at a loss to discover the secret springs which govern his mysterious conduct. Accusations such as Nanda Kumar brought against Hastings also grow from deep roots, especially if we hold with Sir J. Stephen that they were based on fraud and forgery. If, for instance, Mani Begam's letter was not genuine (I myself have no doubt that it was genuine), time must have been required for forging her seal, &c. But there was nothing either in Nanda Kumar's charges, or in the forgery prosecution, which required more than the preparation of one or two months. If Mohan Prasad was having interviews with Hastings in January or February, 1775, he had plenty of time for arranging with him to bring the charge in May. I do not dispute that Mohan Prasad and Hastings concocted the charge, or at least talked about it months before it was brought. All I contend is, that there was no attempt at a prosecution in March 1774, nor any attempt, in the sense of an overt act, till May 1775. It is not at all necessary to my case to suppose that the idea of prosecuting did not occur to Hastings till May 1775. It would, of course, take some time for Mohan Prasad to suborn witnesses, but I should think that a month or a month and-a-half would suffice for this. After all he got very few, and the case, as Sir J. Stephen admits, was badly prepared. This points to a prosecution hastily got up after Nanda Kumar had brought his charges, and after it did not seem likely that the conspiracy case would be successful or lead to a sufficiently severe sentence. One witness for the defence, Manahar Mitra (1035), deposed, that three days before Nanda Kumar was committed, and consequently on May 3rd, 1775, Mohan Prasad offered him Rs. 400 or Rs. 500 if he would say that the jewels - bond was in his handwriting. This witness was a man of some position, for he was a Government officer, and his statement about Mohan Prasad's showing him the bond was confirmed by Durham (1039). Mohan Prasad also admitted (1048) that he had told Manahar that if he would bring the man who wrote the bond, he would give him money.



CHAPTER VI. HASTINGS AND NANDA KUMAR.

HASTINGS arrived in Calcutta on 17th February 1772, but he did not take his seat as Governor till the 13th April following. The reason for the delay was, that the Directors had ordered that Mr. Cartier might continue in the government till the departure of the last ship of the season for Europe after the arrival of Mr. Hastings, "on or before which time it is our pleasure that Mr. Cartier do resign the government to Mr. Hastings."* The letter conveying these orders is dated 25th April 1771, and it appears from it that Mr. Cartier had been removed because he had joined in a resolution to retard the execution of the Directors' orders. By a previous letter of 10th April, Hastings had been appointed second in Council at Fort William, and to succeed Mr. Cartier as President and Governor of Bengal.† It was probably either this appointment or that of supervisors, when Hastings

* Cartier did not leave India till the following year. Hastings' assumption of the government from him in April was criticized, but I think that the orders of the Court exculpate him. Cartier retired to Elysium, distant about four miles from Calcutta, and then went for a time to Midnapore.

† From a paper in an appendix to one of Burke's reports, we learn that Hastings' emoluments as Governor of Bengal were £2,000 a year, a duty of one p. c. on the mint, 4 p. c. consulage on coral, and a commission on the revenues of the Company. It seems that two and-a-half p. c. calculated on the net profits of the Company's territorial revenues was allowed to the Company's servants. The sum realized was divided into one hundred shares, and thirty-one of these were allotted to the Governor as compensation for his not being allowed to trade, and for his not being permitted to receive presents. I do not know the total of these gains, but suppose that it fell a good deal short of the £25,000 given to the Governor-General by the Regulating Act.

was rejected—according to Serafton, because he had too many crooked lines in his head—which gave occasion to Clive's remark that he had never heard of Hastings having any abilities except for seducing his friends' wives. By that time, Clive may have heard of such part of the Imhoff episode as had taken place on board the *Duke of Grafton* or in Madras.

One of Hastings' first acts was to arrest Mahomed Reza Khan and bring him down to Calcutta. This was done in accordance with the orders of the Directors, who told Hastings, in a confidential letter, to issue private orders for the securing the person of Mahomed Reza Khan, together with his whole family and his known partisans and adherents, and to make use of such measures as his prudence suggested for bringing them down to Calcutta. The reasons for this order were that Mahomed Reza was supposed to have embezzled the revenues, and to have monopolized rice during the famine of 1770. This last charge was brought against him by Hazari Mal, who, though the brother-in-law of Amichand, was described by Hastings to be as upright and conscientious a man as any he knew.

At about the same time, Hastings caused Shitab Rai, the Naib Diwan of Bihar, to be arrested and brought down to Calcutta. This had not been ordered by the Directors, but Hastings and the Council considered the step advisable and consistent with the tenor of the Directors' instructions.* They judged rightly, for on 16th April 1773, the Secret Committee wrote, that the apprehending of Shitab Rai was necessary, as he had been too long connected with Mahomed Reza to be independent of him. This might be satisfactory to Hastings, but it did not make the arrest and degradation of Shitab Rai the less a piece of cruel and cold-blooded injustice. He was acquitted in the following year, and Hastings quietly wrote: "I never thought him culpable. I never accused him, nor did the Court of Directors

* According to the Sair, it was Graham who was primarily responsible for the arrest of Shitab Rai.

express any suspicion which glanced at his conduct." In another letter, he writes : " I have taken much pains to investigate the conduct of Rajah Shitab Rai ; I can discover no defect in it ; he has shewn himself an able financier." Again, he writes that Shitab Rai will escape with credit, and that he scarce knows why he was called to account. The fact seems to be that both arrests were made because the Company had resolved to stand forth as Diwan and to get rid of the Native Naibs. They wished to economize Mahomed Reza's nine lakhs of salary, and to employ European agency.* Shitab Rai died of a broken heart, it is said,† shortly after his release, and Hastings tried to make compensation for his unmerited sufferings by appointing his son, Raja Kalyan Singh, Rai Rayan for Bihar.

All authorities agree in giving Shitab Rai a very high character, and yet he was trained under much the same circumstances as Nanda Kumar. When Sir J. Stephen says that a successful man, in circumstances such as Nanda Kumar's, could hardly be other than Nanda Kumar was, " false all through and dead to every sentiment except pride, hatred, and revenge," I feel inclined to ask how he would account for Shitab Rai.‡

Under the orders of the Secret Committee, Hastings employed Nanda Kumar in the inquiry against Mahomed Reza, but when this ended in an acquittal, Nanda Kumar naturally received no reward but rather fell into disgrace. The truce was at an end,§ and in March 1774, Hastings was writing of

* The proclamation divesting Mahomed Khan of the office of Naib Diwan, and announcing the intention of the Court of Directors to stand forth publicly as Diwan, was published by Hastings as early as 11th May 1772. (Harington, II, 189.) It made no provision for the discharge of Mahomed Reza's duties as Naib Nazim. These included the administration of criminal justice, and were, I imagine, left to the Nazim (Mubarak-ad-daula) to arrange for.

† Macaulay got his statement to this effect from the Sair.

‡ It is true that he came from Delhi, but he spent his life in Bihar and in the service of the Nawab of Bengal and the Company.

§ Sir J. S. says (I, 46), " I have stated in the last chapter the points in Nanda Kumar's career which brought him into contact with Hastings, and which must, beyond all question, have inspired him with a deadly

Nanda Kumar as a dark and deceitful character, whom no gratitude, no kindness, could bind, nor even his own interest disengage from crooked politics. It may be that Nanda Kumar was not grateful by nature, but I cannot discover that Hastings ever put him to the test. He compares him to the viper whom the countryman cherished in his bosom till it revived and bit him, but it does not tell us what were the favours he conferred. According to Nanda Kumar, if any gratitude were due, it was from Hastings to him for having helped him with his local knowledge. On 13th March 1775, he said : " Mr. Hastings, until he had informed himself from me of the affairs of this country, remained exceedingly well pleased with me. When he had this knowledge from me, he no longer consulted me ; instead of my patron, he became my enemy, and acted as such." This agrees with Hastings' own language and with the orders of the Directors. So long as Nanda Kumar was likely to prove useful, he was patronized and encouraged to hope for advancement, but when the prosecution of Mahomed Reza failed, and Hastings no longer wanted instruction, he was discarded. He did not succeed in what he had undertaken, and as the Company had no intention of reappointing Naib Diwans, the contemplated reward was never bestowed. Hastings may have employed Nanda Kumar against his inclination, but however meritorious this might be, and however justly it might entitle him to the thanks of the Directors, it could not alter the fact that Nanda Kumar was deceived. Hastings certainly did not tell Nanda Kumar that he was his enemy, and that he only employed him under the orders of the Directors, and because he might be temporarily useful.

hatred for Hastings.' There is, however, nothing in the previous chapter to account for Nanda Kumar's deadly enmity, supposing it to have existed. His getting the better of Hastings in the matter of the collections of Bardwan could not be a grievance to him, and it is only by a blunder (perhaps clerical) that Sir J. S. refers in a note to a correspondence between Clive and Hastings in 1758, as connected with Nanda Kumar's deposition in 1765. With this last point, Hastings had, of course, nothing to do, as he was not in India at the time.

It was while Nanda Kumar was in disgrace and smarting under the disappointment of his hopes and the non-fulfilment of Hastings' promises, that the Members of Council arrived in Bengal. Possibly Nanda Kumar had been looking forward to their arrival and plotting with Joseph Fowke, who must have been in Calcutta for some time, as Hastings speaks of Fowke's having sent him letters from there to Madras. (Gleig, I, 190.) Fowke was apparently a Persian scholar, and had been in India before, and it is therefore likely enough that he and Nanda Kumar had had interviews. According to Hastings, when Fowke went down to Khijeri to meet the *Anson* and the *Ashburnham*, he took with him a long list of malversations. Hastings supposed this the same as Nanda Kumar afterwards presented (Gleig, I, 516), and if this was so, it is not clear where Sir J. Stephen got his authority for saying that Nanda Kumar largely supplemented in his petition the charges which he had previously circulated. (Stephen, I, 54 note.) The Members of Council arrived in October 1774, and at a time when there was plenty of material for an accusation of Hastings. Mahomed Reza and Shitab Rai had been acquitted, and though their acquittal may have been right, yet, as Hastings himself wrote, it was a matter in which it was not possible to steer clear of the imputation of injustice on one side, or bribery on the other. Worse still, there was the Rohilla war. It had come to an end, but the ashes were still smoking, and Col. Champion and Hastings were at feud.

The new Members wanted to see Hastings' correspondence with Middleton, but he would not produce it, and they had therefore no alternative but to recall Middleton. We are told that Middleton's recall made Shúja-ad-Daula burst into tears. (Gleig, I, 469.) This is not improbable. It must have been sad for him to think that when he had expended so much in bribes, he would have to begin the process over again! It has generally been supposed that Hastings suppressed the correspondence with Middleton because it would have convicted him of bribery. This is exceedingly likely, and one is justified in presuming all things one who suppresses evidence.

This is the *peine forte et dure* appropriate to such a crime. It appears, however, from Hastings' letter to Lord North (26th February 1775) that he had another motive for concealment. He had plotted with the Vizier to make him independent of the Company, and to enable him to enter into direct relations with the Crown (see Gleig, II, 50—51). A similar idea had occurred to Clive, and had led to his writing a remarkable letter to Lord Chatham. No doubt the Directors would have regarded such conduct as treachery, and would have come down heavily on Hastings for it.

I do not intend to discuss Nanda Kumar's charges against Hastings.* It would occupy too much of my space, and also

* In treating of the proceedings in Council, Sir J. Stephen says (I, 52) that it appears "it was the practice of the Council, that the Members should sit down during the meeting and write elaborate essays upon important occasions. I do not think the minute in question could have been written by any one in less than an hour and-a-half; and whilst Hastings was writing, and the clerk copying—for it is not in his handwriting—the others must have sat silent."

I believe that this account is incorrect, and that unless when they brought them ready written, the Members dictated their remarks and did not write them; that is, they spoke them, but they were at the same time recorded. Whether the clerks knew shorthand, as Justice Hyde did, I do not know. In a minute of 21st March 1777, Hastings says: "I drew up the minute, while the General and Mr. Francis were in possession of the Council table, and used the first interval which was allowed me to introduce it, which was not till after the hour of two in the afternoon. Had I waited to make this a separate motion and to take my share as usual in the dialogue which was to follow it, an entire week would not have been sufficient, though the Board had met every day to bring them all to a conclusion. On this occasion I cannot avoid taking notice of the use, whether proper or improper, our superiors will judge, to which the General has, of late especially, applied the privilege which he undoubtedly possesses of recording his sentiments by minutes dictated at the Council-board. Scarce any subject, even of the most trivial nature, is allowed by him to pass without long comments and discussions, all more abounding in personal reflections of the points in question. While he is thus employed, I am doomed to the necessity either of exercising my patience by sitting in silent attention to the General, during whatever length of time he chooses to consume in this mode of gratifying his ill-humour against me, or of composing my mind in the adjacent apartment to other business, which I can seldom find an interim of introducing, or to adjourn the Council, where my presence cannot avail to the dispatch of real business, and afford fresh cause of offence by my departure."

I treated of the subject some years ago in the *Calcutta Review*. I may, however, apprise my readers that many years later Hastings admitted the receipt of 1½ out of the 3½ lakhs which Nanda Kumar accused him of having taken. Hastings alleged that this was only a fair sumptuary allowance; but granting that this was a good defence, it was not likely to avail him with Councillors who were such puritans that they would not take *dálie*.* This last fact is chronicled by the Muhammedan historian, who evidently considers it something astonishing. Price, too, refers to it, and it is amusing to find that he argues in the same way as *dáli*-takers do at the present day, *viz.*, that it hurts the feelings of the givers to be refused. So the old game of cross-purposes goes on,—the native offers because he thinks he is bound to do so, and the Englishman accepts because he fears to hurt the giver's feelings. Price is very sarcastic about the Councillors' virtue. He quotes their resolution of 30th November 1774 to refuse *nazzars* (presents), and has the following N. B. to Burke,—“Are you able to keep steady the muscles of your face, sir, on reading the above ridiculous and ostentatious display of mere legal honesty, so tightly laced? Outrageous virtue in the sons of Adam ought always to be suspected in whatever shape it appears.” This extract enables us to appreciate the dislike felt by the Anglo-Indians to the Members of Council, and their fury at the native who dared to denounce the receivers of presents. Price did not know, or did not choose to tell, that Hastings himself made an exhibition of tightly laced legal honesty. On 7th November 1774, he brought two bags before the Council, one containing 146 gold-mohars, and the other, 327 rupis of different sorts, and said that the contents had been presented to him by various persons from 1st August to 31st October; that he did not think proper to discontinue the practice, but had accepted the presents on behalf of the Company. On this Barwell remarked: “What is proper for the Governor-General would in me, I apprehend, rather appear in the light of a consequential, insignificant display

* Complimentary presents of fruits, &c.

of rigidness in excess." No doubt he was right: Khwajah Michael and the unfortunate weavers of Dacca would certainly have regarded the production by him of Rs. 250 (which he says was all he received from the time of his coming down to the Presidency) as an instance of straining at a mosquito and swallowing an elephant. They would perhaps have likened him to the lady celebrated in Indian story who was too prudish to allow the moonbeams to enter her chamber, yet would swim a crocodile-haunted river to visit her paramour.

On 8th December the Council wrote: "We have refused all *nazzars*. The Governor-General has given his reasons for accepting such *nazzars* and paying them into the Company's treasury: Mr. Barwell has also given his for accepting *nazzars* and not paying them over to the Company. Making every allowance for the force of prejudice and custom, they (the natives) are not so dull as to be incapable of understanding that it is possible to be their friends without taking their money." This last epigram refers to Barwell's plea that *nazzars* must be taken because the Home Government had enjoined that every respect should be paid to native customs. "I see their acceptance," he says, "in a light of the greatest propriety, perfectly consistent with the ideas of the Company, and regardful of what they have invariably recommended, attention to the particular prejudices, manners, and dispositions of the natives."

There is a significance in the date, 1st August 1774, which was chosen by Hastings as the starting-point of his restitutions, for this was the date prescribed by Section 24 of the Regulating Act as that after which no civil or military servant was to receive presents or gratuities. That Hastings did not go further back seems to show that he did not consider the receipt of presents illegal until they were made so by the Act.* If such was his view, it would appear to have been wrong,

* Hastings' defence before the House of Lords shows that this was his view. There, when speaking of the 1½ lakhs, he said, "I will not pretend to deny, I never did deny that I accepted the usual entertainments (*Ziafat*) which were then (for it was previous to the Act of Parliament prohibiting the receipt of presents) usually given to the visitor by the visited."

for the Court of Directors had, so long ago as 16th March 1768, sent out a deed to be executed by Verelst, and all subsequent Governors binding themselves not to take presents. We are told that there was no evidence that Hastings ever executed such a deed; but, on the other hand, he had, on 10th February 1769, when appointed to Madras, signed an indenture that he would not take presents, and it was the opinion of Dunning that the obligation of this indenture extended to Hastings' subsequent stations, and was not confined to his then station. For my purpose, however, it is of no consequence whether the distinction was right or wrong. The important thing is, that Hastings seems to have drawn it, for this adds to the probability of the truth of Nanda Kumar's accusations, seeing that they related to a time so far back as 1772. The parade of virtue too, which Hastings made in November 1774, must have increased his feelings of mortification at being called upon to account for receipts of byegone times. It is therefore not surprising to find him thrown into a state of fury and despair by Nanda Kumar's charges. He spoke of him as a miscreant, an arch scoundrel, and a serpent, and said that informations were being raked up out of the dirt of Calcutta. He declared the meetings of the 13th, 14th, and 17th dissolved, and wrote to his friends that, right or wrong, he had no alternative but to do this or throw up the service. Sir J. Stephen quotes a statement by Clavering that the prosecution of Hastings was not founded principally on the evidence of Nanda Kumar and Radha Chaitan Rai, and from this argues that Hastings had not much interest in destroying Nanda Kumar (Stephen, I, 215). He omits to notice that Clavering was giving his evidence in July, after Nanda Kumar's conviction, which made him a felon, and I believe incapacitated him from giving evidence. At all events, Clavering and his coadjutors thought that it did so,* for on

* Apparently they were right, for Mr. Law, Hastings' senior counsel, objected to the admission of Nanda Kumar's evidence on the ground, among others, that the conviction for forgery made Nanda Kumar infamous, and that the infamy extended back to the period of the commission of the crime.

26th June they recorded that, as Nanda Kumar's evidence was invalidated, if not entirely impeached by his conviction, inquiry should be made if a bill of discovery could not be filed against the Governor-General. Hastings was present when this minute was recorded, and merely remarked that it was unnecessary for him to give any opinion on the motion. This minute sufficiently accounts for Clavering's remark, which may be explained also by the question being double-barrelled—Radha Charan being referred to in it. It does not appear that the latter was ever regarded as an important witness.

That Clavering was not disposed to undervalue the evidence of Nanda Kumar is clear from his remarks of the 8th May in the debate about his confinement in the jail. "The Judges," he said, "probably are ignorant how much a close confinement may endanger the life of this man, which is of so much importance to the public for proving an accusation which he has made of venality in the Governor-General."

A pamphlet of Joseph Price enables me to show that, on another occasion, Clavering said that Nanda Kumar's revelations were of immense importance.

The circumstances were as follows:—

There was a Mr. Benjamin Lacam in Calcutta whom Clavering and the rest of the majority patronised. Some one, possibly Price himself, wrote to the General that his encouragement of Lacam kept respectable people from his house, and this was Clavering's reply:

"SIR,—I and my friends, Colonel Monson and Mr. Francis, have been sent into this country to redress the grievances of the natives, and put an end to the peculations and extortions which prevail. This we cannot do except we come to know who, among the old administration, have been guilty of such enormities. Rajah Nanda Kumar, who has hitherto been the Prime Minister of this country, offered himself to produce proof positive of numberless extortions.

"Those he had already given in were of immense importance; but they came to hand so late, that the last ship of the season had been despatched, though not yet gone to sea. It was in vain for us to trust any of the officers who acted under the late Government;

excuses would have been found : the impossibility of sending letters down in time to catch the ships would have been quoted. In short, we had nothing for it but to make our difficulties known to Mr. Lacam, who boldly undertook the task, and executed it at the risk of his life. After such proof of his attachment and desire to serve us, do you come with a story about his former friends ? Why, Sir, those former friends to whom he stands indebted, and to nobody else, have, in revenge for his intrepidity in our service, called upon him suddenly for the whole amount of all their bonds, which bonds were given for Mr. Hancock's concern of one-third in the chunam contract, for which poor Lacam was obliged to pay Rs. 50,000 premium."

To understand this, it is necessary to state that Lacam conveyed the dispatches on board the *Anson* when she was lying at Ingellee (Hijli) in the beginning of May 1775. This act, and also, I presume, Lacam's identifying himself with the majority, by standing bail for Fowke, so enraged Hastings, that he sent his sarkar to Lacam on 17th June with the peremptory message, "Rupiya mangta," I want my money, *viz.*, the bonds, all of which the sarkar presented. Poor Lacam was in despair, but apparently he got Francis and others to lend him money.

According to Impey, Lacam was one of the few who refused to sign the address of thanks to the Judges, his motives being that he already had a contract for lime, and that the gentlemen were recommending him to the Directors to be admitted high in the list of their servants. So far, however, from Lacam's benefiting by his independence, Hastings took an early opportunity to cancel a lease which he had obtained for making a new harbour. He also had him flung into jail, and kept there for over two and twenty months. He was not released till December 1778, and even then Hastings would not give up his claim. All the other creditors, among whom were Chambers, Francis, and Wheler, gave him a release, but Hastings would not, and so the other creditors empowered him to confess judgment to the Governor-General, and to pay the amount out of such effects as were to be sold. This was in October 1780, and in the December following, Lacam and

his wife, for whom even Price has a good word, went home with Francis in the *Fox*. Lacam had a project for making a new harbour for Calcutta, and got a lease allowing him to levy tolls on boats, but the Court of Directors disapproved of his pretensions; *vide* their letter of 23rd December 1778, of which Dr. Busteed has given me an extract.

Hastings' conduct in dissolving the meetings of Council has been generally condemned, but Sir J. Stephen attempts to defend it. He, of course, makes light of such authorities as Burke and Mill, but I should have thought he would have yielded somewhat to a brother-lawyer, Mr. Sayer, who was the Company's counsel, and whom Sir Janes calls an eminent lawyer. Sayer's opinion was taken on the point, and while he considered that Hastings' procedure was technically maintainable, he characterised it as follows:—"The meeting of the Council depends on the pleasure of the Governor, and I think the duration of it must do so too. But it was as great a crime to dissolve the Council upon base and sinister motives, as it would be to assume the power of dissolving, if he had it not. I believe he (Hastings) is the first Governor that ever dissolved a Council inquiring into his behaviour, when he was innocent. Before he could summon three Councils and dissolve them, he had time fully to consider what would be the result of such conduct—to convince everybody, beyond a doubt, of his conscious guilt."

The danger to Hastings from Nanda Kumar's charges was not only in the weight of the accusations themselves: there was also the encouragement which they gave to other informers. Nanda Kumar was not the first person to bring charges of peculation, but he was perhaps the first who directly attacked Hastings. The *Mulungis*, or salt-workers, brought charges of oppression in November 1774, which affected persons belonging to Hastings' household. But the first charge of bribery seems to have been brought by the Rani of Bardwan, widow of Trilok Chand. She began her complaints on 30th December 1774, but they were then directed against Mr. Graham. Hastings made common cause,

with his friend, and tried, with the help of Barwell, to prevent the Rani from coming to Calcutta, as she wished to do, in order to substantiate her charges. Graham replied to the Rani's petition by a letter of 6th January, which was drawn up in a very lofty style. Among other things, he demanded that the Rani should give a penalty-bond for some lakhs of rupees, though surely her position as a member of one of the first families in Bengal was a sufficient guarantee. According to Francis, Graham took a more effectual way of protecting himself, namely, by bribing Sir Elijah Impey. He writes: "Clavering's rupture with the Chief Justice took place a little before Graham's departure for England, when that man was accused of seizing the young Rajah of Bardwan and carrying him away a prisoner from his mother's house. The charge was true (the taking away the child was not, I believe, denied by Graham), and might have been very troublesome to Graham if he had not taken proper measures to secure the friendship of the Chief Justice. From that early moment I conclude that Impey had taken his line against us. The views of that party in England, which had placed such a man in such an employment, were now so evident, and the success of them so probable, that some of the natives, who had heard that Hastings and Impey were schoolfellows, have asked me seriously whether they were not of the same caste?"

Apparently Impey had always a hankering after the flesh-pots of Bardwan, for he afterwards procured for his cousin Fraser, who was the Sealer of his Court, a large contract for repairing the embankments in the Bardwan District. Francis intimates (*Memoirs*, II, 122) that the real contractor was Impey, and evidently this was the common notion in Calcutta, for we find that Impey was generally known there by the sobriquet of Justice Pulbandi,* or the Venerable Pulbandi. (See Hicky's *Gazette*, *passim*.) The matter is a digression, but it is such an important illustration of Impey's character, that I must here give a few details about it. Fraser,

* Pulbandi, the keeping bridges or embankments in repair.

then, was Impey's cousin, being the son of his mother's brother, and was a member of his household in Calcutta. Francis calls him a low, obscure fellow, who had not long ago been the mate of a ship, a wretch of the lowest order, a creature and distant relation of Impey, and already well-provided for in the Supreme Court.. This is strong language, but the description is substantially borne out by Fraser's own account of himself in an affidavit which he made before Justice Hyde on 16th August 1782. In it he says:—

" Sir E. Impey, when he was about to leave England and proceed to Bengal, requested the deponent, then a chief mate in the service of the E. I. Company, to relinquish his pursuits in that line, and trust to the interest of the said Sir Elijah to provide for this deponent in India; which this deponent did accordingly: and this deponent further says, that the said Sir Elijah has been very solicitous, as this deponent believes, to promote the interest of this deponent; that, as the education of this deponent had not been such as qualified him for the higher and more lucrative offices of the Supreme Court (as the said Sir Elijah has often declared to this deponent), the said Sir Elijah procured him this deponent to be appointed Sealer of the said Court soon after its first institution,* to which office a yearly salary of Rs. 2,000 arcots and no more is annexed; and that this deponent held no other office whatever in the Supreme Court till the month of December in the year 1776, when he was appointed Examiner in the said Court, to which office a yearly salary of Rs. 6,000 arcots and no more is annexed, and that he hath not at any time held any other office in the said Court except the offices above-mentioned. And this deponent further says, that the profits of the two offices, including fees and salaries after the necessary deductions for clerks and contingencies, would not, if this deponent did not lodge and board gratis in the family of the said Sir Elijah, be more than would be necessary to maintain this deponent in decency and with common necessaries."

In the same affidavit, Fraser says that he hoped to be made Superintendent of Police, but that this appointment was

* The orders of 22nd October 1774 show that Pritchard, who was afterwards Clerk of the Crown, was the first person appointed Sealer.

given to Playdell; that he was then appointed Coroner in the latter end of 1778, but as he did not like the office and was not sufficiently instructed in law to perform the duties, he declined the appointment. Some time afterwards George Bogle came into his bedroom and recommended him to make proposals about the *puls* (embankment). The above affidavit, as well as a letter of Impey, of August 1782, were called forth by Francis' letter to the Select Committee of 3rd April 1779. It seems that Francis thought the job really too gross, and therefore wrote home about it. He first refers to a contract given to an unknown man named Wattel, and which, according to him, was really in favour of Sir John D'Oyley and Dr. Burn. He then goes on:—

“ On 13th February 1778, the majority thought proper to give a contract for repairing the *puls* of the district of Bardwan to a Mr. Fraser for the sum of Rs. 1,80,000 sicca, whereas in the settlement of the district formed by Sir John Clavering, Col. Monson and myself, for the years 1776 and 1777, the Rajah's officers had engaged and were bound to perform the same service for the sum of Rs. 25,000 sicca per annum. Mr. Fraser is an inferior officer in the Supreme Court of Judicature, where, I understand, he is well provided for. You are to consider and judge of the views and principles which have guided the Governor-General and Council in the allotment of such a design on terms of such immediate profit to a person so circumstanced as you will find Mr. Fraser to be, if you think fit to inquire into his situation and connections. By referring to the consultations, you will find that I have gone as far in opposing the measure as the delicate and personal nature of the question and perhaps my own safety would admit of. Let me only assure you that it concerns the Company's service in a very high degree. Some late resolutions, still more extraordinary and questionable than even those taken in the first instance, have brought these contracts again into view. The sum payable to Mr. Fraser out of the Company's treasure is sicca rupees 4,20,000, which, reckoning the current rupees at two shillings, is equal to £48,736. Besides that, you will observe that in the second contract Mr. Fraser is authorized to execute certain additional works which properly belong to his contract, and to deliver in extra bills for the same upon honour.”

Fraser's reply to this is, that he is to deliver his bills upon oath and not upon honour! Francis says, in conclusion, "In the case of Mr. Fraser, the object meant to be provided for is sufficiently apparent, and very well understood in this place."

Fraser's affidavit is followed by that of his agent, John Bayne, but I think it will hardly be disputed that the contract was a job. Fraser was an uneducated man, who had been a sailor, and was foisted into the Supreme Court by his relative. He knew as little about embankments as about law, and had, in the nature of things, no connection with either. Why should the contract be in his name when the work, if done at all, was done by Bayne, unless because he was the *farzi* of Sir Elijah? It is no wonder that we find in Hicky's *Gazette* satirical verses beginning—

"Pulbandi once, in a high fit of crowing,"

"Exclaimed thus to Archibald Sealer, the knowing."

The same journal publishes an ironical letter signed Philanthropus, describing a noble act of generosity on the part of Archibald Sealer, who is called "one of the hardy sons of the north, who has been for these forty years the sport of Dame Fortune and has combated with adversity in almost every quarter of the globe, but who, at length, by the adventitious appointment of a friend to an office of importance and trust, has been transported to the once flourishing capital of Bengal, from which period the dawn of his successes began. *He has lately made a settlement of one lac of rupis on Pulbandi's children.** Yet Sir J. Stephen tells us that Impey was like many English Judges!

The inquiry into the Rani of Bardwan's charges was resumed in March, and one of her letters is dated 10th March, i. e., one day before Nanda Kumar brought his charges. Birju Kishor, the Rani's diwan, was taken before the Board on the 14th March, and compelled to admit accounts in which

* A "displaced civilian, asking his friend the other day what was the best means of procuring a lucrative employment, was answered; 'pay your earnest devoys to Marian Allypore (Mrs. Hastings), or sell yourself, soul and body, to Poolbundly.'"—(Hicky's *Gazette* of 17th March 1781.)

a large number of bribes were set forth. He admitted papers showing a gift of Rs. 5,000 to Kanta Babu, and of Rs. 500 to his "mate," Kista Charan Chattarji, but denied Ex. D, in which Rs. 15,000 were set down as paid to Hastings. Dayaram Baral, however, a servant of the Raj, deposed that Ex. D was in his handwriting, and that Birju Kishor had directed him to write it. Nanda Kumar may not have instigated these charges, but he was the enemy of Graham and he had formerly been in charge of the Bardwan District. (His connection with Bardwan is shown by the fact, that at the forgery trial Sadaraddin stated that when he was munshi to Mr. Graham at Bardwan, he frequently had occasion to see Nanda Kumar's seal, and that it was from this that he was able to recognize it on the receipt, Ex. F.) Mr. Gleig takes the view that the Rani was encouraged by Nanda Kumar's success to attack Hastings, for he says, it was not till the success of Nanda Kumar's devices spread abroad that she openly took the field against the Governor-General. On 17th March, the majority, in spite of Hastings' opposition, rewarded the Rani by giving her and her son *khilats*.* That Hastings saw a storm gathering against him from all quarters, appears from a letter of 25th March, in which he says: "The trumpet has been sounded, and the whole host of informers will soon crowd to Calcutta with their complaints and ready depositions. Nanda Kumar holds his darbar in complete state, sends for zamindars and their vakils, coaxing and threatening them for complaints, which no doubt he will get in abundance, besides what he forges himself."† The prognostic was right, for on 30th March, a new charge was brought before the Board by one Zain-al-'abdin (the ornament of the servants of God) accusing Hastings of appropriating two-thirds of the salary of the Faujdar of Hugli. In one sense, this was a more serious charge than the others, for the money was the Company's, and

* The compliment to the Rani consisted of a pair of fine white shawls and an elephant.

† Macaulay was probably thinking of this when he wrote the paragraph beginning—"The natives soon found this out."

not merely that of Mani Begam or other natives. The charge was apparently true, but true or false, the majority acted on it and dismissed the faujdar. On this occasion, too, Hastings dissolved the Council. The faujdar, in humble imitation of Hastings and Kanta Babu, tried to evade appearing before the Board, and when at last he did so, refused to be sworn. He, however, did not escape so easily as his exemplars. Sir J. Stephen says that Nanda Kumar was not concerned with this matter, at least ostensibly, but Barwell's letters, which he has published, show that Nanda Kumar was believed by Barwell to be very much concerned in the matter indeed. He says that Zain-al-'abdin was Nanda Kumar's instrument, and that when the faujdar was dismissed, Mirza Mehndi, who had been Nanda Kumar's servant on Rs. 20 per month, was, at the recommendation of the latter, appointed to the vacant post on a salary of Rs. 3,000 per month.* It was clearly necessary that Hastings should do something to stop the torrent of accusations, and as he considered Nanda Kumar the prime mover in them, he naturally dealt first with him. It was only by striking terror that he could avert destruction.† Mahomed Reza, Mani Begam, and even the wretched

* Barwell omits to mention that this was but the half of what Khan Jahan got. Hastings also spoke of Mirza Mehndi as a creature of Nanda Kumar (letter of 20th May 1775), and he turned him out and restored Khan Jahan as soon as Monson's death gave him a majority. (Proceedings of 8th November 1776.)

Neither Khan Jahan or Hastings ever tried to clear themselves of the charges brought against them. The charges were very express, and were supported by Khan Jahan's own letters. Zain-al-'abdin was a well-known man, for he'd been farmer of Tamluk.

† When the majority taxed Hastings with having taken up the conspiracy charge in order to defend himself against Nanda Kumar's accusations, Hastings admitted the allegation, and was very angry with the majority for objecting to his tactics. On 18th May he writes—"My adversaries have placed me in a situation peculiarly difficult and delicate. They have made me the butt of unceasing persecution for these seven months past, and have called down the whole host of informers from every quarter of Bengal against me. Yet, when I have endeavoured to bring to justice men charged with a conspiracy to ruin my fortune and blast my character with forged and libellous accusations, the same charge is retorted upon me by the gen-

Kamáladdin were joining in the cry, and there was no fore-seeing the end. But a resource was at hand. There was the faithful bosom of Sir Elijah Impey, and there were the thunders of the Supreme Court. This strange engine from over the sea resembled in its effects the artillery invented by the rebel angels, and enabled Hastings to scatter and confound the General, the Colonel, and the War-office Clerk, as well as the chattering Bengalis who mustered round their standard.

Granting that the taking one and-a-half lakhs from Mani Begam could be defended or excused, it is clear that the Members of Council were not disposed to consider it as justifiable. They were prepared to make Hastings refund ; indeed, called

lemen of the majority, although in all their most violent attacks upon me they have made professions of the deepest concern for the honour of the Governor-General ; and the prosecution of Raja Nanda Kumar and others for a conspiracy is represented by them as having a tendency, which in this connection can only mean a design or intention to prevent or deter him from persisting in making good those discoveries which he has laid before the Board. This is the very wantonness of oppression. It is like putting a man on the rack, and exclaiming with him for struggling with his tormentors."

Sir James Stephen remarks : " The prosecution of Nuncomar for conspiracy was regarded by the Council, and was afterwards represented by Burke and Elliot, as a counter-stroke to Nuncomar's attack upon him, and no doubt it was so ; but why, with Kamal's evidence before him, Hastings was not to take the matter into Court, I cannot understand. He had no other legitimate mode of self-defence, and this was perfectly legitimate." Neither Hastings nor Sir J. S. has explained how the prosecution of Nanda Kumar for conspiring in April to get up *baramads* (accusations against men in power) could clear Hastings' character of the charges brought in March. Is it true that Hastings had no other legitimate mode of defence ? Could he not have denied that he had taken the bribes ? and could he not have prosecuted Nanda Kumar for libel ? "

Hastings practised throughout his career, and with eminent success, what Burke called " the poor Indian stratagem " of bringing counter-charges (*palta-nalish*, as the Bengalis call them).

He met Fowke by accusing him of conspiracy, he met Nanda Kumar by accusing him of forgery, and he endeavoured to turn the tables on the managers by moving for a vote of censure on Burke. No wonder that Francis said that Hastings was in reality a native, and that he described the impeachment by saying, I was tried, and Hastings was acquitted.

upon him to do so, and it is obvious that if the taking of the money could be palliated or even defended, this would only make Hastings and his friends the more indignant with Nanda Kumar. It was an old story, and had occurred before the Regulating Act was passed or the ex-War-office Clerk had received his appointment. Surely, it was monstrous that it should now be raked up against the Governor! What business had a Member of Council with things which happened in 1772? And if Hastings must be called to account, what would happen to subordinates such as Barwell and Vansittart? *

Nanda Kumar brought his charges † on 11th and 13th March, and Sir James Stephen says that the Councillors only inquired into them on these two days. Perhaps this was too precipitate, but Hastings was himself largely to blame for it. He would not attend the Council himself, nor would he allow his banyan to attend. I am not convinced that the majority

* The extract from Barwell's correspondence, with which Sir James Stephen concludes his work, shows the state of feeling in Calcutta—"Even admitting the Governor to have benefited by presents, this mode of putting people upon the rack to accuse him, and paying others with lands, high offices, and honours for doing so, is a tyranny that must blend falsehood with truth, and make equivocal any testimony thus obtained."

† It has been supposed by some that the majority were not justified in inquiring into such half-forgotten scandals as the "peculation and extortion" mentioned in Clavering's letter and those revealed by Nanda Kumar and that even if the charges were true, they should not have gone into them. This was a view urged by Hastings and his friends, and is plausible; but the fact is, that the majority were only carrying out the orders of their masters, the Court of Directors.

On the 28th March 1774, and therefore just before the Councillors sailed for India, the Court drew up a series of instructions for the new Council, and the 35th paragraph was as follows:—

"We direct that you immediately cause the strictest inquiry to be made into all oppressions which may have been committed either against the natives or Europeans, and into all abuses that may have prevailed in the collection of the revenues or any part of the civil Government of the provinces; and that you communicate to us all information which you may be able to obtain relative thereto, or to any dissipation or embezzlement of the Company's money; and that you as soon as possible form such regulations as shall seem most effectual for the remedy thereof."

did not act properly in bringing the matter to a head by calling on Hastings to refund. This was to send him a challenge which he might answer, and at all events, the referring of the matter to their law-officers was, in accordance with Barwell's opinion, that the Supreme Court was the proper place in which to try the question. Sir James Stephen knows that *ex parte* proceedings are generally short, as absence is regarded as a kind of confession. Mr. Sayer thought Hastings' conduct a sufficient proof of guilt. Nor is it correct to say that the only inquiry into the charges was that of 11th and 13th March. When Hastings would not refund, or even answer the demand for restitution, the majority made further inquiries. They deputed Mr. Goring to inquire into Mani Begain's accounts in Murshidabad, with special reference, apparently, to the lakh and-a-half of rupis, and a great deal of Goring's inquiry referred to this sum. His evidence is to be found in Appendix F to the Eleventh Report. He there says that Nanda Kumar was under prosecution and executed while he himself was at Murshidabad on this commission, and he bears testimony to the strong impression made by the execution on the natives there, and to their feeling that it would thereafter be impossible to bring charges against men in power.



CHAPTER VII. HASTINGS' RESIGNATION.

ON 27th March 1775, Hastings wrote letters to Graham and Maclean (Gleig, I, 521), which show how terrified he had become. He informed them that he had formed a resolution to leave India and return to England by the first ship of the next season, if the earliest advices from England contained a disapprobation of the treaty of Benares or of the Rohilla war, and marked an evident disinclination towards him. In that case, he says, "I can have nothing to hope, and shall consider myself at liberty to quit this hateful scene before my enemies gain their complete triumph over me. If, on the contrary, my conduct is commended, and I read in the general letters clear symptoms of a proper disposition towards me, I will wait the issue of my appeals." *

Sir James Stephen uses this letter as an argument to prove that Hastings had nothing to do with the prosecution of Nanda Kumar. He says, "a man was hardly likely to plan a judicial murder in order to avoid the possible loss of an office, which he had authorized his agent to resign upon a contingency unconnected with the persons to be murdered." This is hardly fair, for Hastings' meaning clearly was, that matters were going so much against him, that unless he got

* The appeals here referred to are those made by Hastings to the Court of Directors. When the quarrel between Hastings and the majority had reached a climax, both parties agreed to appeal to the Directors. Hastings talks of this as his last resource, and speaks of making a solemn appeal. (Consultations of 8th December 1774.) On this occasion, Barwell drew up a minute which, I think, fully disposes of any claim he might have had to be considered a man of ability. Possibly it was to this that Francis referred when he said that Barwell's style might be gathered from his minute.

supported about the other and former matters, he would have nothing to hope.. If backed up about the former matters, *i. e.*, the treaty of Benares, &c., he would hold on and await the issue of his appeals against the majority.. This is clear enough from his letter of the same date to Lord North. In this he says, "agents, chosen from the basest of the people—and none but the basest would have undertaken such an office—have been excited to bring accusations against me, of receiving presents in the course of my former government. These accusations, true or false, have no relation to the measures which are the ground and subject of our original differences; but my opponents undoubtedly expect, that if they can succeed to lower my private character in the opinion of the world, the rectitude and propriety of my public conduct will be overlooked, and that their credit will rise in proportion as mine is debased." (Gleig, I, 518.) A similar view is taken in the letter of 25th March 1775, to Graham and Macleane. (Gleig, I, 513.) There Hastings speaks of the new mode of attack which his adversaries have taken up, and says that the object clearly is to divert attention from his opponents' recent conduct, and to fix it on events which long ago received complete approval, and of which the memory is now almost obliterated (*i. e.*, the affairs of Mani Begam and Guru Das in 1772). It is then clear that Hastings affected to treat the question of the receipt of presents as a matter of private conduct only, and was apprehensive of the bad effects the disclosures would have on his credit as a public man. It may be remembered that when a genuinely private matter occurred, namely, the intrigue of Francis with Mrs. Grand, Hastings and Barwell used it as a means of discrediting Francis, and were mean enough, as the latter remarks, to send "that business" home to the Court. But Sir James Stephen has made a more serious "error than the one just noticed, for he has taken Hastings' letter of 27th March to be the authority on which Macleane tendered Hastings' resignation. No doubt he has been led into this by Gleig, but it is still an extraordinary mistake. If he had read the letter with

care, he must have seen that it was not a resignation letter at all. The word *resignation* is not mentioned. Macleane received verbal as well as written instruction from Hastings.* In the letters quoted by Gleig (II, 88) he describes his interview with Mr. Becher, and how the latter asked him if he had no formal instrument of resignation to produce. "No," he replied, "I believe neither Mr. Hastings nor any of those who were present thought it a matter of so much formality; if certain things were not obtained, I was ordered to signify Mr. Hastings' wish to be relieved; if they were obtained, I was ordered not to make this signification. But the orders were so strict and positive, that I entreated, and with difficulty obtained, some latitude as to the time and mode of notifying the intention. I have now notified to you Mr. Hastings' wish to have a successor appointed, and no blame can lie with me now but that of having ventured so long to delay it. Mr. Becher asked who was present when Hastings gave his instructions. I replied, 'Mr. Graham and Mr. Vansittart heard me receive my instructions; they were communicated to Mr. Stewart next morning.'" This was on 11th October 1776, and on the 16th idem, Vansittart and Stewart were examined by the Directors. Graham could not be examined, for he had been very ill, and had gone to Lisbon. (Gleig, II, 68.)

'Vansittart's account of the matter may be read in his letter to the Court of Directors, dated 13th April 1781. (Authentic copy of Correspondence in India, Vol. VI, pp. 70 *et seq.*, Debrett, 1787.) The letter deserves to be given at length. He says;—

"HONOURABLE SIRS,—Having seen a pamphlet entitled a Short Account of the Resignation of Warren Hastings, Esq., in which my

* The subject of the resignation, and of Hastings' repudiation of it, is discussed in an immense despatch of 207 paragraphs (many, however, relating to other matters) from the Directors, dated 23rd December 1778. It is there said that the evidence of Vansittart and Stewart was full, explicit, and direct on the subject of the power. It appears from para. 25 of this letter that Graham died shortly after his arrival in England (he and Macleane arrived in the summer of 1775), and that, consequently, Macleane was, in October 1776, Hastings' sole agent.

name appears as a witness to the authority given to Mr. Macleane, which authority has been disavowed by Mr. Hastings, I think it necessary to state the part I took in this transaction somewhat more at length than is recorded in your proceedings of the 23rd of October 1776. I will not at this distance of time undertake to charge my memory with the precise words of my testimony: but I can assert with confidence that it was to the following effect:—That when Mr. Hastings gave his instructions to Mr. Macleane, on his departure from Bengal in the beginning of 1775, he told him he would not continue a nominal Governor without any real power, but was resolved to quit his station, unless by the removal of General Clavering, Mr. Francis, or Colonel Monson, or by the addition of some friend of his own to the Council, the authority was given him as well as the name; and that he authorised him to declare this resolution wherever he thought proper. It is very true, as Mr. Hastings observes in his letter of 15th August 1777,* that he did not authorise me to give testimony: but it is equally true that he did not forbid my doing it; and, therefore, when his agent, Mr. Macleane, requested it of me, I would not have been justified in refusing. Mr. Macleane wrote to me to beg I would attend in Leadenhall Street for this purpose; I came from Berkshire in consequence. I had at the time a perfect recollection of the words Mr. Hastings had used, and I repeated them literally without attempting to explain them. It rested with the Court of Directors to determine whether or not they amounted to authority for a resignation. If the original minutes of the testimony I gave to the Chairman, Deputy Chairman, and Mr. Becher can be found, and the instructions to Mr. Macleane, which Mr. Hastings says he has in his possession, are produced, the former will appear to be merely a confirmation of the latter.† With respect to the resigna-

* This is the famous letter saying that no event of his life ever befell him for which he was so little prepared as the news of the notification made by Colonel Macleane.

† Hastings in the letter of 15th August tells the Directors that he has these letters, but I am not aware that he ever produced them. Surely his own words are sufficient to dispose of the question of his agents' powers. On 29th June 1779 he writes, "I believe, and think it obvious, that I gave them an unlimited discretion to act for me as they thought best." To Lord North he said that he was not pleased with Macleane's engagement, but that he held himself bound by it and was resolved to ratify it.

tion, I understood from Mr. Macleane that it was not intended that Mr. Hastings should be obliged to quit the Government immediately on the receipt of the advices from the Court of Directors, but only that he should do it in time to return to England by one of the ships of the season; and it has been mentioned to me in letters from Bengal, that although Mr. Hastings disapproved of the resignation, it was really his intention to have abided by it, till General Clavering's attempt to dispossess him by violence, and the subsequent occurrences induced him to pursue a different conduct."

In connection with this subject, it may be noted that Hastings, in his letter of 6th January 1781 to the Court, informing them that he had appointed Major Scott as his private agent, says that he had particularly provided that he would never suffer any person whatever to perform any act in his name that might be construed to imply a resignation of his authority. "I protest," he says, "against the exercise of so dangerous a power, from its having been assumed upon a former occasion, without being warranted by my consent, or by any previous instruction that could bear the most distant tendency to such a measure."

Macleane showed two papers to three of the Directors, but the letter of 27th March can hardly have been one of them, for it contains nothing which could not have been shown to the whole Court. Besides, it appears that the papers which Macleane showed were papers written in January, just before his leaving for England. Hastings' letter to Sykes (Gleig, II, 155), in which he professes to endeavour to recollect what his instructions to Graham and Macleane were, and gives his own and Barwell's impression of their substance, is of itself enough to demonstrate that the letter of 27th March is not one of the resignation papers.

Sir James Stephen is inaccurate in saying that the letter of 27th March was written to Hastings' agents in England. At the time it was written, Graham and Macleane were on the high seas, having left Calcutta only about two months.* His

* Macleane went home in the *Dutton*, and in February 1775 had got no further than Madras, having tarried there for instructions from his other principal, the Nawab of Arcot.

object in writing was to tell them that he would not wait for the result of their negotiations. They had been told verbally, and also by papers of instructions, to tender his resignation if certain conditions were not complied with, but now he told them, in supersession of, or in continuation of, the former instructions, that he would quit India by the first ship of the next season, that is, in the cold weather of 1775-76. He evidently contemplated starting before he could hear from them, for he writes that he will contrive to stop at the Cape for intelligence. The date of Maclean and Graham's departure for England is given with sufficient accuracy by Francis in a letter to Lord Clive,* of 12th January 1775, in which he says: "Macleane goes home by this mail along with the Hon. Mr. Stewart." He adds, "They are both commissioned, as I verily believe, to support Mr. Hastings, and do us all the mischief they can. Hastings will assuredly stand his ground till the return of the letters, not from any comfort he enjoys in his office, or any real desire to continue in it, but he is afraid of a shot in his rear, and dire necessity makes him face about. He has no possible hope of saving his head but by suppressing those discoveries which would be immediately made if he were to keep (leave ?) his ground." No doubt it was Hastings' intention to await *the return of the letters*, and the fact that on 27th March he changed his mind and resolved to quit India at once, shows how much he had been affected by the discoveries of Nanda Kumar. Still more conclusive, perhaps, is the fact, that when Nanda Kumar was sent to jail for forgery, and "in a fair way to be hanged," as Hastings put it, he retracted the resolution of 27th March and resolved to see the issue of his appeal; in other words, to wait for the return of letters. Could anything be more indicative of the connection between Hastings and the forgery prosecution than these two letters, one dated 27th March and the other 18th May 1775? The last letter gives, incidentally, another proof of the connection between Hastings and the prosecution. He

* Francis of course did not know that Clive had committed suicide in November 1774.

tells his friends that after Nanda Kumar's commitment, Ram Krishna, the adopted son of Rani Bhowani, sent an emissary to Kanta, entreating Hastings' forgiveness, and offering to reveal the arts which had been practised on him by Nanda Kumar to compel him to put his seal to the petition. Here, then, was another informer, ready to recant like Kamáladdin, as soon as he saw the danger of attacking the Governor, but he was either too late, or he was faint-hearted, for the General (Clavering) sent for him, and took a second petition from him, and "now," says Hastings, "he is tied down to the party for ever."

Laughlin Macleane was a remarkable man in his way, and merits some description. He was an Indian officer, and seems to have taken part in the campaign of 1764. (Broome's Bengal Army, 450.) Then he went home, and must have acquired some reputation as a pamphleteer, for he is 24th on the list of the 42 persons who have been alleged to be Junius.* He returned to India not long after Hastings' being sent, as Francis puts it, by Sir George Colebrooke, from the cabals of the India House, and the ruin of Change Alley, to control the accounts of the army in India. In plain words, he was made Commissary-General. Then, according to Francis, Hastings wanted an agent in England, and he did not think that Graham and Lawrell should go home without the assistance of some person who understood the political geography of England: So Macleane was induced to resign† his place, and

* He probably owed this distinction to his having carried on a newspaper correspondence with Wilkes. He arrived in England as Hastings and the Nawab of Arcot's agent in July 1775, and on 25th November following he gave a very curious account to the Directors of how he became the Nawab's agent. He mentions in the letter (Appendix 107 to the 9th Report) that the Nawab allowed him £4,300 a year!

† In the consultations about his resignation there is an epigram which seems worthy of Junius. It seems that when Macleane threw up his appointment of Commissary-General, Clavering as Commander-in-Chief wanted him to render accounts. Macleane was dreadfully indignant, and complained that the majority wanted to issue a *ne ebeat regno* against him. The majority denied that they had such an intention, and in allusion to the preposterous character of the complaint, observed that they did not know how to reply to it, for "false argument may be refuted, but a total want of reason is unanswerable."

once more meet beggary and his creditors in Leadenhall Street. He came out to India again, and resumed his employment with the Nawab of Arcot. He was eventually drowned in the *Swallow* on his way back from Madras to Europe. Probably this was fortunate for Hastings, for it prevented the world from ever hearing Maclean's account of the resignation affair. It was under Maclean that Elliot acquired his talents for intrigue, and Macintosh seems to have been a pupil in the same school.

I think that there can be no doubt that Hastings' real reason for refusing to resign was Monson's death in September 1776. This gave him a majority, for he had a casting-vote. Another reason was the honour conferred on Clavering by appointing him to the Order of the Bath. Maclean and Stewart looked upon this as a breach of the compromise under which they had tendered the resignation, and wrote to Hastings that he ought not to resign. Their letters were despatched from Portsmouth, and apparently before the *Rippon* (in those days spelt thus) sailed, so that Hastings would get them at the same time with the Directors' acceptance of his resignation. It would therefore appear that his agents would have approved of his conduct in refusing to give up the government to Clavering, though it is not likely that they would have agreed to his denying their powers.*

Meanwhile the tender of the resignation had been of great service to Hastings, and was another instance of the marvellous luck which attended him throughout life.† It silenced his enemies, and gave him an easy and honourable retreat. "But for this, Lord North," as Stewart wrote (Gleig, II, 92), "would

* Hastings has been blamed by both friends and foes for choosing such a fool as Major Scott for his agent. Perhaps he took the best man he could get; capable men with characters to lose would be shy of acting for a principal who might at any time throw them over. It appears from an allusion by Gleig that there was eventually a rupture between Hastings and Scott.

† It should, perhaps, rather be set down as an instance of Hastings' unscrupulous adroitness. He was certainly a wary-wise Ulysses and (to use an epithet of Carlyle) the shiftiest of men. The following bonmot occurs

have praised your abilities, and moved the House to prosecute you upon the evidence of Nanda Kumar, and Lord Mansfield would have cried up your code of laws, and mustered all his forces, as he actually did, to go down to the India House to vote against you." No doubt, after the danger was passed, Hastings could write ironically about Stewart and Macleane's congratulations, and say, "I am congratulated on the happy issue of the negotiation, in the preservation of my honour and my fame, and on the complete victory which I have obtained." But the danger was a very real one while it lasted.* As Macleane wrote on 25th June 1776 : " My last letter, dated 25th March, and the few lines I got forward in April, would inform you of the very hostile intentions of administration towards you, and of the critical state of your affairs here. But when I wrote those letters, I had no idea of the very great lengths it was determined to proceed for your removal." Then he goes on to say, that the most injurious calumnies were industriously propagated against Hastings, and that, in May 1776, it was determined to bring forward again the motion that had been before negatived by the Court of Directors, for addressing the Crown to remove Messrs. Hastings and Barwell from their respective stations in Bengal.

Lord North, as an old placeman, foresaw that Monson's death might affect Hastings' willingness to resign, and spoke to Macleane on the subject. Macleane replied: "My Lord, Mr. Hastings is a man of the strictest honour, and one of the warmest friends of the King's Government ; if your Lordship

in "Hicky's Gazette": "A courtier being in company the other evening, was desired to give his toast, upon which he gave the Great Mogul (Hastings); but not seeing it go round, he asked where he stuck; upon which a gentleman lately arrived from the mofussil, and who sat next him, drinking off his glass, very coldly replied, "At nothing, by G—d."

* The dangers averted by the resignation were,—1st, that there should be a full inquiry into Hastings' conduct ; 2nd, that if he had been removed as was proposed, he could not have been restored without the votes of three-fourths of the Directors, whereas if he had resigned, a bare majority would have been sufficient.

will honour me with the confidential communication of your wishes, I will pledge myself to you that, barring unforeseen accidents, your desire shall be conveyed to Mr. Hastings in three months, and that he will cheerfully comply with it." I suppose Macleane was intending to send a letter overland. Perhaps Lord North, when he heard these assurances of the old intriguer, may have wished, like Pascal's friend, that he had some one who would vouch for Macleane's being of the strictest honour!*

* Monson was ill for about two months, and as his death seemed probable, Hastings speculated on it, as he had done in the case of Nanda Kumar. (Gleig, II, 112.) His words are: "Having had some time afforded me, by the strong probability which there was of Colonel Monson's death for some time before it came to pass, to deliberate on the consequences of it, I have already drawn the line of my conduct, with the concurrent opinion and advice of Mr. Barwell and Sir E. Impey, and have written to Lord North to inform him of it."



CHAPTER VIII. ‘HASTINGS’ CONFESSION.

IT will now be convenient to consider whether Hastings ever made any admission of having employed Impey to hang Nanda Kumar.

In 1779 or 1780, Hastings wrote to his friend, Lawrence Sulivan, describing Sir E. Impey as a man to whose support he was at one time indebted for the safety of his fortune, honour, and reputation.* The question is, to what do these words refer?

Lord Macaulay held that they could refer only to the case of Nanda Kumar, and that they must mean that Impey hanged Nanda Kumar in order to support Hastings.

Earl Stanhope, Sir John Kaye, and Sir J. Stephen hold that they refer to the dispute between Clavering and Hastings about the resignation.

In my humble opinion Macaulay is right, and this for the following reasons:—

(1) There is some resemblance between the words of Hastings’ letter and those used by him on 29th April 1775, to describe the plots of Nanda Kumar and others. He wrote of these as most base and infamous artifices to ruin his character and fortune. Still more similar are the words quoted above (p. 122 note), where he speaks of a conspiracy “to ruin my fortune and blast my character with forged and libellous accusations.” †

* Gleig does not give the date of this letter. It may have been written in 1779, for on January 9th, 1780, Impey was “Dear Sir”—ing his old friend.

† His character would be blasted by the accusations, for they affected his integrity. In 1783 he used a similar phrase to Mr. Drose when referring to a charge against his integrity, “My name and fortune would be blasted and ruined.” (Gleig, III, 18.)

(2) Impey took a much more prominent part in the support of Hastings in 1775 than he did in 1777. In 1775 he took up the complaint of Kamáladdin on a private message from Hastings, and he took the principal part in the trial for forgery. It is misleading to say that he was then only one of four Judges. As Chief Justice he had a casting voice,* and if he had chosen to agree with Chambers, Nanda Kumar would not have been tried under the Statute of George II, and he would have been respited after conviction. I know that this latter point has been doubted, but we have it on the testimony of Captain Price, who was on the grand jury, and who seems to have been present throughout the trial. He says, "Sir Robert Chambers, one of the Judges, did move his brethren to postpone the execution until His Majesty's pleasure should be known." He goes on to say that Sir Robert withdrew his motion on account of Radha Charan Mitra's case and of its having been shewn to him that Nanda Kumar's name headed the petition in that case. The latter part of this statement is incorrect, but it is likely enough that the case was referred to. Price adds that he is sorry that Chambers withdrew his motion, although he does not think that it would have made any change in the opinion or conduct of the majority.† It

* On one important occasion, Impey made use of his casting voice. This was when the Company's advocate applied for a rule to prevent revenue debtors from eluding the authority of Government, by bringing collusive suits in the Supreme Court. This rule could not be granted, says Hastings, without a virtual acknowledgment of the right of the Company to imprison their diwani debtors in the town of Calcutta. This question was raised in Kamáladdin's case. At that time, Hastings had reason for supporting Kamál, and therefore did not side with the majority. In November 1776, he was of a different opinion. Impey and Chambers were in favor of the rule, and it was therefore granted by virtue of his casting vote, in spite of the protests of Lemaistre and Hyde, who drew up twelve articles of objections to it. (Gleig, II, 117.)

† Price also refers to the subject in his observations on Macintosh's Travels, when he says, p. 81, "Sir Robert Chambers did wish to have the man tried on some other statute, and he also wanted to refer the matter to the King in Council after he had joined in the condemnation of the Rajah on as full a conviction of his guilt as any man in Court felt."

was Impey who presided as Chief Justice at the trial ; it was he who charged the jury, and, according to Brix (one of Nanda Kumar's counsel), he spoke as if he was supreme, for he said that if Kista Jibau had not prevaricated after the evidence was closed, he would have directed the jury to find Nanda Kumar not guilty. It was Impey who was publicly thanked by the grand jury and the merchants for his conduct in the trial, and whom they asked to sit for his portrait, and he in turn accepted the compliment as specially addressed to himself. He said : " I entertain the highest sense of the great honour done me by the marks of esteem which you are pleased particularly to address to me. It is with the greatest alacrity that I accept of the honour proposed me " (having his portrait taken).*

(3) It seems to me that Hastings' mind was running on the occurrences of 1775 when he was writing to Sulivan, for he went on to speak of Chambers as one who " has made no scruple to avow himself my enemy. God knows why." Now, how had Chambers shown himself Hastings' enemy except in the affair of Nanda Kumar ? In the resignation question he concurred with Impey, Lemaistre, and Hyde. If, too, the case was so clear that even an enemy concurred in holding that he had not vacated the government, what reason had Hastings for being specially grateful to Impey ?

(4) The Judges did not decide that Hastings was right in disavowing his agent, and that in fact Macleane had exceeded his instructions. If they had done this, Hastings might have

It is no part of my business to defend poor Sir Viner Pliant, as Chambers was called. He was evidently a very weak man, and was despised both by friends and foes. Thus Price says in one of his letters : Sir Robert Chambers submits his sometimes better judgment to the more worldly knowledge of the Chief Justice, and with a disposition mild from nature makes himself the instrument of a brother possessed of less knowledge but more ambitious resolution.

* Impey's letter to Governor Johnstone, which Sir J. S. has published, is the best comment on the remark that he was only one of four Judges. He therein clearly intimates that he could have saved Nanda Kumar, and says nothing about being prevented or overruled by the other Judges.

said that they saved his honour and reputation, but the fact is that they never touched this point. It was not referred to them, and they had no materials for judging of it, as Macleane was not in India then, for there is a letter from him (Gleig, II, 98) dated London, 12th May 1777. The Judges, therefore, could not examine him, nor could they examine Vansittart or Stewart, or see what they had said. In August 1777, Hastings said in his letter to the Directors that he had copies of two papers of instructions to Macleane, but he did not produce them then, nor apparently at any subsequent time, and at the time of the reference to the Judges, in June, his story was that he could not find the papers. (See his letters of 25th June 1777, Gleig, II, 155, where he says that he could not distinctly remember what instructions he had given to Graham and Macleane, and that if he had kept a copy, he had mislaid it.) The whole of the proceedings in India are published in Appendix No. 14 to the Ninth Report of the House of Commons, and we there have a list of the papers submitted to the Judges. Hastings' alleged instructions are not among them, and, in fact, all that the Judges got were the papers which had come out in the *Rippon*. The Judges gave their decision late on the night of the 28th June, and what they said was :

"Upon mature consideration of the papers submitted to us, we are unanimously, clearly, and decidedly of opinion, that the place and office of Governor-General of this Presidency has not yet been vacated by Mr. Hastings; and that the actual assumption of the Government by the Member of the Council next in succession to Mr. Hastings, in consequence of any deduction which can be made from the papers communicated to us, would be absolutely illegal for the following reasons :

"(First) because the office of Governor-General was conferred on Mr. Hastings by Act of Parliament, and, according to the tenor of that Act, can only be vacated by death, removal, or resignation. That Mr. Hastings is not dead is a notorious fact; no intention is manifested or act done by the Directors in the least tending to his removal; and we are firmly of opinion that he hath not actually resigned.

"(Second) Colonel Macleane's letter, the only instrument by which Mr. Hastings can by any one be conceived to have relinquished his office, is in fact no resignation, but a notification of the Governor-General's desire to resign. His words are, speaking of Mr. Hastings, he has authorised, empowered, and directed me to signify to you his *desire to resign* his office of Governor-General of Bengal, and to request your nomination of a successor to the vacancy, which will probably be occasioned in the Supreme Council. He neither asserts himself to be authorised, nor does he take upon himself, in fact to make any actual resignation; he only intimates an intention of the Governor which is to take place in future. He does not request a nomination of a successor to a vacancy which he had by his letter effected, but of that which would in future be occasioned by Mr. Hastings' carrying his intent into execution and actually resigning.

"(Ninth) Another circumstance which strikes us most forcibly is, that the Court of Directors, aided as they are by the best legal advice, must have known that if Mr. Hastings had in October last vacated the office of Governor-General, he could have had no legal voice in the Council here. Finally, they say we have given the papers and subject a consideration which has taken up several hours,* wishing to deliver such an opinion as from the reasoning of it, not from its authority, might claim weight sufficient to prevent the fatal consequences of a divided government, but we do assure you that none of the time hath been taken up by settling a difference of opinion. There is not one point in which from the first to the last we have not entirely concurred. We transmit it in strong hopes that it may have the effect, the consideration of which could only have led us to give an opinion at all; and most ardently pray to God that it may avert the mischiefs which seem to impend over the East India Company and this country."

I submit that this account of the matter does away with the idea that Hastings was specially indebted on this occasion to Sir Elijah. If the latter had gone against him, the decision would still have been in Hastings' favour.

- * The Judges assembled at the Chief Justice's house at 6 P.M., 20th June, and, according to M. Grand, they did not separate till four next morning.

The Judges' opinion on the resignation question is an able piece of lawyers' work, but I do not think that it can be regarded as sound. It has too much of the refining and quibbling about words, which seems to have characterised Impey's habits of thought. Though the Judges were unanimous, yet their view cannot carry as much weight as that of the Court of Directors, for their opinion was formed hastily and without taking evidence. They only sat one night, and the pressure on them to save the peace of the settlement at any cost was not favourable to calm deliberation. They also in a manner prejudged the question, for they assembled at the instance of Hastings and Barwell before the point had been referred to them by the other side. As Macaulay says, Hastings risked nothing by proposing the reference. The Directors, on the other hand, had more than one consultation, and though Maclean's letter was presented on 10th October, they did not accept the resignation till the 23rd idem. The Judges surely made too much of the words "desire to resign." How else can a servant intimate his resignation? He cannot resign when he likes, and etiquette, at least, requires that he should express himself as desiring to resign, and not as actually resigning. When a civil servant resigns in India, I apprehend that he writes that he wishes to resign, and asks that his resignation may be accepted. Especially would this be so, when, as in Hastings' case, there was talk of removing the officer, and the resignation was tendered as a means of avoiding dismissal. Besides, Maclean's letter only opened the negotiations. It was not itself the instrument of resignation. On getting it, the Directors inquired into Maclean's powers, took evidence, and accepted the resignation. Maclean must then have adhered to the statement made in his letter of the 10th, and have carried the negotiation to a close. He was present at the subsequent proceedings; it was he who produced his instructions before the three Directors, and it was he who got Vansittart to come up from Berkshire and give evidence. He never showed any wish to resile from his intimation of the 10th, or to obtain a *locus paenitentiae*. In spite of the

authority of Mr. Thornton, who has given a very full account of the resignation proceedings, it seems to me that the authors of the Ninth Report are correct when they say : " It was extraordinary that the nullity of the resignation should not have been discovered in England, where the act authorising the resignation then was, where the agent was personally present, where the witnesses were examined, and where there was, and could be, no want of legal advice, either on the part of the Company or of the Crown. The Judges took no light matter upon them in superseding and thereby condemning the legality of His Majesty's appointment, for such it became by the royal approbation." Though Clavering and Francis loyally acquiesced in the decision of the Judges, they drew up a minute showing the reasons for the view they themselves took. There they say : " If the words 'a desire to resign' formally signified to the persons empowered by law to accept such resignation, and to fill up the consequent vacancies, do not signify a real resignation, they may be converted into any other sense; they may be understood to imply an unlimited power of continuing in possession." They add : " It is sufficient for us, however, that the Court of Directors understood the words as a real resignation, and unanimously accepted it accordingly." It seems to me that these words contain the conclusion of the whole matter. Granting that Maclean had exceeded his powers, still, when Hastings' masters had found that he had resigned, he should have submitted. He could not be justified in referring the matter to a tribunal which had no legal authority in the matter.

(5) The Judges did not fully support Hastings on the occasion, and he was only half-pleased with them. He and Barwell voted Clavering out of the Board and out of the Commander-in-Chiefship, on the ground that he had given up his seat and that he had failed in proving his title to the Governor-General's office. The Judges, however, declared that Hastings and Barwell had no right to declare the seat of any Member of the Council vacant. Hastings' letter to Sullivan (the friend to whom that of 1779-80 was addressed) shows how much he was dis-

satisfied with "the support" of the Judges on this occasion. He says, "when they had so decidedly pronounced the first act of General Clavering illegal, we had no conception that the Judges would again interpose their authority to replace him in his former office. Besides, the indecent terms in which the General and Mr. Francis had combated their first opinion, afforded so strong and, in some respects, authoritative grounds for the belief that the Judges would refuse to answer any more references. There was no occasion for it."

Mr. Impey not unfairly appeals to his father's conduct on this occasion as proof of his perfect impartiality and independence of the friendship of Hastings. Would such lame and half-hearted support as this be likely to be characterized by Hastings in the strong language quoted by Macaulay ? *

The resignation by Macleane as agent for Hastings, and the proceedings which followed thereon, are about the most intricate and interesting part of the whole Hastings' drama, but they are an episode on the gigantic scale of those in the Mahabharat, and would require a volume for their adequate treatment. They are quite a study in the matter of conflicting evidence. It has generally been said that the Directors acted hastily in accepting the resignation, but their proceedings were marked by considerable deliberation. They too had lawyers whom they consulted, and the matter was properly before them, whereas the Calcutta Judges were interlopers.

Macleane's letter to the Court was written on the 10th and received on the 11th October, when it was resolved that the matter should be taken into consideration on the 18th. On that day Macleane was called in, and told that the Court desired to be informed of the authority under which he acted in a point of such very great importance. He produced some papers to the three Directors appointed to examine them, and said he had more. The affair was again adjourned to the

* Mr. Merivale says : "It must fairly be admitted that the Judges did their best to repress violence on both sides, and maintained the authority of law, as well as saved the peace of the settlement."

23rd. Among the papers was one in the Governor-General's own handwriting, stating that he would not continue in the government of Bengal unless the conditions therein specified were complied with. Probably this was the original of the paper referred to by Hastings in his letter of 15th August 1777 as being in his possession, and which, according to him, comprised four short propositions which he required as the condition of his being *confirmed* in the government. It has been well remarked by the Directors and by Mr. Thornton, that this reference to confirmation is most extraordinary, for Hastings was then as confirmed in the government as he possibly could be. The Regulating Act mentioned him by name as the Governor-General, and when Hastings was disputing with Clavering, he sent an extract from this Act to the Judges to prove that he had been formally made Governor-General by Act of Parliament, and so could not lightly be turned out.

[On the 23rd October the Directors accepted the resignation, and nominated Mr. Wheler to the seat in the Council which would become vacant. This referred to the fact that under the Regulating Act (Section 10), if the Governor-General resigned, his place was to be supplied by the senior Councillor. Lord Macaulay is altogether wrong in saying that Wheler was fixed upon by the Directors to succeed Hastings, and that they sent out orders that General Clavering should exercise the functions of Governor-General till Mr. Wheler should arrive. He is also incorrect when he says further on, that Wheler came out expecting to be Governor-General, and was forced to content himself with a seat at the Council-board. Wheler could never have imagined that he was to be Governor-General. Neither the Directors nor the Ministry could fill up that appointment, for the Act had already prescribed what should be done for the remainder of the term of five years for which the new constitution was in force. If, therefore, Hastings had resigned, Clavering did not require any commission to make him Governor-General. He succeeded at once by the fact of his being the senior Councillor. Wheler was appointed to fill the vacancy which would be caused by Clavering's pro-

motion, but when he was at Portsmouth he heard of the death of Monson, and posted back to London, and got a fresh appointment to succeed Monson. This probably was, as Thornton points out, because Monson was nearer the presidential chair. Wheler's first appointment would have brought him in behind Francis and Barwell, but the new one made him the senior Member.* Maclean thought that this proceeding of Wheler's invalidated the proceedings, for Hastings was now left without a successor and so could not resign, but he was not aware that Wheler resigned his first appointment just before quitting the shores of England, his letter being dispatched from the Start. The above narrative shows, I think, that the Select Committee of the House of Commons were correct in remarking that the Directors showed themselves extremely punctilious with regard to Mr. Maclean's powers. They add, that the Directors probably dreaded the charge of becoming accomplices to an evasion by which Mr. Hastings, resigning the service, could escape the consequences attached by law to a dismissal. I may here note that some able remarks on the resignation question will be found in my father's "History of India." Thornton is fuller, but the question can only be thoroughly studied in the appendices to the Ninth Report.

Wheler's nomination was approved by the King, and the Court of Directors sent out the proceedings, together with a postscript dated the 30th October 1776, to Calcutta. The dispatches were carried out in two of H. M.'s ships, the *Rippon* and the *Cormorant*. The *Cormorant* was the first to arrive, and her dispatches were received and read in Council on the 19th June. Clavering and Francis expected that Hastings would at once surrender his post, but he said nothing, and the Council broke up. Clavering waited till ten next morning, but not hearing anything from Hastings, he then wrote him a letter, addressed, "Warren Hastings Esq.", calling on him to give up the keys of the Fort, etc. Though the

* Dr. Busted, however, has pointed out to me that, in fact, Wheler always signed after Francis and as if below him in rank.

dispatches were not received till the 19th, their contents were known beforehand. On 14th June, Hastings got his letters from Macleane. They were brought by Macintosh, whom Macleane had employed for the purpose, and who is always represented by Hastings' friends as having been only the paid agent of Francis. Macintosh came out in the *Rippon*, but left her at Madagascar. How he came on from there I do not know, or even if he did come to India then. According to Francis, Sir Edward Vernon facilitated the manœuvre by sending on the *Cormorant* from the Cape before Macintosh.*

* According to *The Travels in Europe, &c.*, Macintosh did not leave Europe till 1778, and did not arrive in India till 1779, but I still think that the Macintosh referred to by Hastings must be W. M., for Price calls the latter an intimate friend and fellow-labourer of Colonel Macleane. Macintosh's letter, too, to Hastings, of 17th November 1778 (I, 165), reads as if he had been previously acquainted with him.

Macintosh was a long time in getting to Calcutta. He sailed from L'Orient and got as far as Pondicherry, but was sent back from thence by the Governor to the Mauritius. From thence he got to the Cape of Good Hope, and eventually to Calcutta. Price says Macintosh left Europe some time in 1777. His description of him is not flattering. He was, he says, above the middle height, of a heavy, lowering look, and so swarthy that he had often been taken for the bastard of a Spaniard.

Sir J. Stephen rashly calls (II, 97 note) Francis an habitual liar, because he denied that he had employed Macintosh to say or do anything for him in England. Sir J. S.'s ground is Mr. Parkes' discovery that Francis paid two sums of money to, or for, Macintosh. One item is a payment to Almon, the bookseller and publisher in Piccadilly, and, I suppose, Sir J. S. seized upon this as proof that Francis paid for the printing of *The Travels in Europe, &c.*. Unfortunately for this view, Almon was not the publisher of *The Travels*. They were published by Murray of Fleet Street, and in 1782, and not in 1781 as Sir J. S. says. Francis arrived in England in October 1781, and he wrote the letter to Wheler, in which he denies the agency, on 18th January 1782. The payment to Almon for Macintosh was in December 1782. The first payment, dated 18th January 1782, is of £1,078, far too large a sum, I think, he paid for *The Travels*. There is, in fact, very little about Francis in the *Travels*, and I presume that Sir J. S. has never seen the book, and has been misled by Mr. Merivale's statement, that the letters in it run minutely into defence of Francis. I cannot believe that Francis would have given as much as £5 for such help as Macintosh could give to his cause. It seems to me more likely that the £1,078 were paid to Macintosh for services connected with Mrs. Grand. It seems (*Quarterly Review* for December 1848, p. 70) that he took her home, and he may have arranged for her

Clavering and Francis did not get their letters till the 19th June, if even then. They heard nothing till some hours after Hastings had received his letters, and then, apparently, they heard only indirectly, and from a friend in India. "At midnight of 14th June," says Francis, "received a letter from Colonel Leslie that an express was just arrived with notice of Hastings' resignation, and the red ribbon for Clavering." These facts should be remembered when Clavering is taxed with precipitation. No doubt he was wrong in demanding the keys from Hastings, and in treating him, by his style of address, as one already in a private station, but he had cause to be angry. Hastings was not at all taken by surprise by the packet of the 19th June. He knew about the matter five days before, and he actually alluded to the news in Council on the 17th June, and spoke of the approaching change of government, and gave the prospect as a reason for proposing to cancel an appointment made on the 13th idem. (Gleig, II, 165; and Francis, II, 86.) Clavering overruled his game, and so lost it. Hastings always asserted that he held on because of Clavering's "brutal outrage," and that otherwise he would have held himself bound by Maclean's engagement, and was prepared to ratify it. He by no means took a cheerful view of his position after the Judges had decided in his favour, and does not express any gratitude for support, except for Mr. Barwell's (about whom he is very warm). (Gleig, II, 167.*.) He writes that he shudders at the

support in France. Dr. Busted's conjecture that Mrs. ^{and} went home with Tolfrey is probably not correct, for the lady mentioned was ^{but} in *Hicky's Gazette* is a Mrs. G—d—, so that the name was a dissyllable. In that it is pretty clear that Mrs. Grand went home early in 1780, and it is, ^{as} 108, ^{as} that the entry in Francis' journal, of 17th March 1780, "despatch from ^{the} *Crees*," refers to her. The *Crees* joined at the Cape the fleet in which ^{was} Macintosh's ship, the *Ganges*.

Barwell's offer to Francis to escort Mrs. Grand home, if the message refers to her, goes to show that there was a project for her leaving India early in 1780.

* "From the 20th to the 23rd, Mr. Barwell and myself were inseparable. We fortunately lived under the same roof. Here I must stop for a moment

consequences of departing from the letter of Colonel Macleane's engagements, and dreads, equally with death, the thought of entering into a new scene of indefinite contention.

Sixth, and lastly, I would ask how Hastings' victory in this resignation affair involved the safety of his fortune, honour, and reputation? How was his fortune saved, or his honour, or his reputation, by the decision of the Judges? It still left him shuddering at the consequences of disavowing Macleane.

On the other hand, there can be no doubt that the hanging of Nanda Kumar did tend to the safety of his fortune and his honour. Sir J. Stephen rejects Macaulay's view as being revolting and improbable. He complicates the matter by introducing a letter of Impey to whom Macaulay made no allusion. Impey might not like to refer to the matter, but there is not the same improbability in Hastings' doing so. Sir J. Stephen's view requires two assumptions for its support: (1) That Hastings' employing Impey to hang Nanda Kumar was a revolting, abominable, and horrible crime; (2) that Hastings would recognize it to be so.

Now, though I think Hastings' conduct criminal, I would hardly characterize it as revolting or abominable. Moreover, according to my view, Hastings had taken the bribes: if I thought with Sir J. Stephen that he was innocent, and that Nanda Kumar's charges were false, I would judge him still more leniently. At any rate, we have two Englishmen of undoubted honour—Lord Macaulay and Sir John Kaye—declaring that even if Hastings was the real prosecutor, his conduct was not very bad and was far from being shameful. ^{He wrote} ~~as~~ⁱⁿ 1782, doubts if the execution of Nanda Kumar can be reckoned among Hastings' crimes, and Kaye says: "West could not be inclined to judge him very harshly if he were" (^{the} real mover in the business); "but for Impey there could have been no valid excuse, if he really became, as alleged, the judicial tool of the Governor-General."

to indulge myself in acknowledging the gratitude which I feel for the unremitting support which I have received from his friendship which never exerted itself with a greater warmth of attachment than on this trying occasion."

Native opinion thought Hastings the real prosecutor, but native opinion, as represented in the *Sair al Matakharin*, did not blame him.*

Why should we suppose that Hastings, who sacrificed the Rohillas and the Begums, whose conduct to Chait Singh was so bad that even Pitt was at last compelled to throw him over, should feel squeamish about alluding to the hanging of Nanda Kumar? He looked forward to it with pleasure, writing on 18th May, that the "old gentleman was in jail and in a fair way to be hanged." It seems certain, also, that after the sentence, he employed his private secretary, Belli, to thwart Farrer in his endeavours to get up a petition for mercy.†

Hastings wrote his letter to Sulivan long after the event, but under the influence of strong feeling. His words are:

* M. Raymond dedicated his translation of the *Sair* to Hastings in 1787, and he makes no comment on his author's view that Hastings was the prosecutor. This could not have been from inadvertence, for one of Raymond's objects in translating the book was to vindicate Hastings. He says in his preface that the translation was hurried to England in a rough state, "merely to afford some timely assistance to that great man, by elucidating upon so competent and so unconcerned an evidence as our historian, several articles that went far towards clearing the Governor's character." He goes on to specify these articles, and one of them is "the opinion of the natives on Nanda Kumar's death; and their detestation of the prosecution undergone by the Governor from General Clavering and his party."

I may here note that Raymond was born in Constantinople and was linguist to Lord Clive. He made a pilgrimage to Mecca, and so got or took the name of Haji Mustapha. He died in 1791, leaving a will in which he said in effect that he did not believe in any religion, but that he generally conformed to the established religion of the country he was born in (Constantinople). The Judges accepted this as a declaration that he was a Musalman and so refused probate.—Morton's Decisions, 108. There is a notice of his death at p. 530 of Seton-Karr's Selections from the *Calcutta Gazette*, Vol. II. He gives some account of himself in the preface to his translation of the *Sair*, but the fullest narrative is in the second vol. of Dalrymple's Oriental Repertory. He tells us there that he went to France in 1741, when he was eleven years old, and came to India in 1751 as a writer in the French Company. In October 1757 he became speaker to Lord Clive. At one time Vansittart employed him in his trade, which may account for Hastings' intimacy with him. In 1761, he was at Manilla.

† See post.

"I suffer beyond measure by the present contest, and my spirits are at times so depressed as to affect my health. I feel an injury done me by a man for whom I have borne a sincere and steady friendship during more than thirty years, and to whose support I was at one time indebted for the safety of my fortune, honour, and reputation with ten-fold sensibility. And under every consciousness of the necessity which has influenced my own conduct, and the temper with which I have regulated it, I am ready to pass the most painful reproaches on myself on the least symptom of returning kindness from him." If Impey did hang Nanda Kumar in order to save Hastings, we cannot doubt that the latter would feel grateful to him, and an expression of his feelings might easily slip out in an unguarded moment. In considering the correspondence of the two men at this time, it is instructive, and, I think, characteristic of their natures, to find that what Hastings felt was sorrow at being injured by a friend who had once been his benefactor, while Impey's feeling was indignation at Hastings' ingratitude and at his breaking his promises. The allusion to the promises is very curious, and, in my opinion, suspicious, especially as Impey said it was no recent affair. "Hastings," he wrote to Thurlow (Impey's Memoirs, p. 184), "had repeatedly given him positive promises of private confidence, and had assured him that no acts should proceed from him hostile to the Court." At page 182 he says that these allusions to former conversations had no reference to late conversations, but referred to former declarations from him to me that during his government no act hostile to the Court should be done, and that rather than commit himself to a contest with the Court, he would leave his government. In a similar strain he wrote to Dr. Fleming, that Hastings' present conduct was diametrically opposite to repeated and warm promises. So also he wrote to Dunning, complaining that the power exerted against him would not have been in Hastings' hands, if he had not helped to keep it there. The whole tone of his complaints seems to me low and sordid, and just what we

might have expected from Impey. "I helped Hastings once, and therefore," he seems to say, "he is bound to help me now whether I am right or wrong." It seems to me that if Impey could venture to allude to promises of Hastings to support the Court through thick and thin, and whether it was right or wrong, he might also venture to allude to what he had done in fulfilment of his part of the bargain. The promises to which Impey refers must, I think, have been made after the Nanda Kumar charges, for in 1774, Hastings did not scruple to oppose the Court. The first conflict between the executive and the Court took place in November 1774. This was on the occasion of the Court's granting a *habeas corpus*, directing one Khwaja Cavorke, residing at Sutaluri, in what is now the district of Bakarganj, to produce fifteen men whom he was said to have confined. Jarret, the Company's attorney, sent on 17th November a copy of the affidavit on which the writ had been obtained, and on the 21st idem, Hastings drew up a minute representing the danger to the revenue if such processes were issued, and the result of this was that the Dacca Council was written to and told to instruct Cavorke to disobey the writ. The Board seems to have written twice on the subject, and their words on the second occasion are: "As this is of great importance as well as delicacy, we once more recommend the greatest punctuality and prudence in carrying these orders into execution, and that you take care that the Armenian behave with the greatest decorum and circumspection in refusing his obedience to the writ, and that he put it merely on the ground of his not being amenable to the jurisdiction of the Court." In January, there was another case of the issue of a *habeas corpus* directed against one Ranga Ram, an inhabitant of Birbhum, and in this, too, Hastings did not side with the Court. A change seems to have come over him in May 1775, for we find him then broadly stating that he would object to every interference of the Board with the Court. The point was, whether the Judges had ordered that Nanda Kumar should be confined in the common jail, and Monson proposed that the Sheriff and his deputy should be

called in and asked to show the warrant. As a matter of fact the warrant did not specify the common jail, as very probably Francis knew through his brother-in-law, but of course it was necessary that the warrant should be formally before the Board.

Hastings said, "I object to the motion, as I shall to every interference of this Board with the authority of the Supreme Court." Here, I think, we see Hastings fulfilling his compact, and doing so in a very zealous way, for the motion did not interfere with the Supreme Court. The motion only proposed to examine the Sheriff as to what orders had been issued, and moreover, the warrant had not been issued by the Supreme Court but by Lemaistre and Hyde as Justices of the Peace. However, it threw Lemaistre and Hyde into a state of the highest indignation, and made them give vent to their feelings in a travestie of an ode of Horace. Just and tenacious, they say, of the great purpose for which it was His Majesty's pleasure to send us to this country, neither the tumultuous clamours of the multitude, nor the angry tyranny of authority, shall ever move us, etc., etc.

Hastings gave another proof of his staunch adherence to the Supreme Court in the matter of Kamáladdin in July 1775, when he refused to oppose the issuing of the writ of *habeas corpus*. His conduct on this occasion is the more noticeable, as he must have thought the Court wrong, for he afterwards got Impey to concede the point involved in it. This defection of Impey was bitterly resented by Lemaistre and Hyde, who no doubt could see no reason why the precedent of Kamáladdin should be departed from. Perhaps Impey reconciled his decisions in the two cases by saying, that Kamáladdin was released because the return to the writ was imperfect, as it did not claim a right to imprison without bail or main-prize. The antinomy could not, however, be got over in this way, for when Kamáladdin was released on the first occasion, because the return to the writ was defective, the Calcutta Council arrested him again. This was viewed by the Supreme Court with great indignation, and the Council was threatened with punishment for contempt of Court. They even took upon

themselves to pronounce that the Council must proceed first against Kamál's sub-lessee, Basant Rai.* Hastings again showed his zeal for the Court by making an affidavit against Radha Charan Rai's claim to be an ambassador, and so exempt from the jurisdiction. Hastings' making an affidavit on this occasion was the more remarkable that he himself was the prosecutor. It is significant, too, that after he had gained his object by swearing, and getting his friends and dependants, Vansittart and Lane, to swear that the Nawab was not a sovereign, and had no power, he turned round three years later and asserted that the Nawab had an unquestionable right to the Nizamat, that is, to the military power and the control of criminal justice. (Mill, IV, 27 note) Hastings' motive for the change of view was that he now wanted to punish Mahomed Reza Khan, who had been so ill-advised as to side with the majority, and even to become Francis' most powerful agent. See Hastings' very plain-spoken letter to Sykes who had been a patron of Mahomed Reza, and who might be supposed to be dissatisfied with Hastings' treatment of him. (Gleig, II, 189.) In this letter Hastings takes credit for having conducted the inquiry against Mahomed Reza in a perfunctory manner, his words being : " My behaviour to him while he was under the displeasure of the Company was as kind as it was possible to be.. I received the informations which were produced against him, but I neither sought nor encouraged them beyond the first publication of the Company's orders." I submit that this letter gives support to Nanda Kumar's charge, that Hastings did not properly inquire into the case of Mahomed Reza Khan. As illustrating Hastings' duplicity, it is worth while to contrast his letter to Sykes with that to Sulivan in 1774 (Gleig, I, 391) in which he says, " I have taken every measure, by proclamation, protection, and personal access, to encourage evidences against him (Mahomed Reza Khan)." The only argument against the

* Basant Rai was also the name of the fictitious lessee of Barwell's farm in the Dacca District. Was this the same man?

view that Hastings' letter refers to the Nanda Kumar trial is, that it is unlikely that he would make such an allusion. Such an argument appears to me worthless. Has not Sir J. Stephen told us that the murderer, Donellan, hastily, and under the pressure of irritation, let fall that he had poisoned his brother-in-law?

For these reasons I hold that Macaulay's intuition * was right, that Hastings was referring to the Nanda Kumar case, and that he accidentally and virtually confessed that Impey had hanged Nanda Kumar in order to support him.†

* Merivale justly praises Lord Macaulay for his " sagacity in deducing right conclusions from imperfect knowledge " He was like Newton, who could see the propositions of Euclid while they were yet wrapped up in the definitions and axioms.

† I was formerly inclined to think that Hastings' remark referred to the resignation, but further reading and reflection have changed my opinion.

CHAPTER IX.

THE TRIALS FOR CONSPIRACY.

I NOW proceed to describe the trials for conspiracy. These, like the forgery trial, have a long history which has been very imperfectly told by Sir James Stephen.

In order that the cases may be fully understood, it is necessary to summarise the evidence given by General Clavering in the prosecution by Barwell (1289).* Clavering began by saying that shortly after his arrival in India, Mr. Elliot offered to become his interpreter. In answer to this Clavering said, he intended to employ an interpreter who was then with the army, and of whom he had heard a very good report. (It will be remembered that Clavering was Commander-in-Chief and was probably entitled, as such, to the services of an interpreter. I presume that the interpreter he referred to was Mr. Roberts.) Elliot submitted to this reply, but offered his services till the regular interpreter arrived. They were accepted by Clavering, and he used to make over all his Persian correspondence to Elliot.

Then there arose divisions in the Council, and Elliot became Hastings' Private Secretary. This made it unpleasant for him to interpret for Clavering, and he represented this to the General about a month after his original offer of his services. "Mr. Elliot," says the General, "opened himself to me, and

* The trials for conspiracy were published by Cadell in 1776 in the same volume with the forgery trial, but they have a separate title-page, and that does not contain the imprimatur of the Supreme Court. It would be strange if the Judges were responsible for the reports of the conspiracy trials, for they go into details beyond the scope of a report, and breathe a strong party spirit. If Elliot edited them, as presumably he did, the fact shows how unfortunate, to say the least, it was that Impey insisted on his being interpreter in the forgery case.

told me in a very honourable manner, that I must be sensible, from his close connection with the Governor-General, how unpleasant a thing it would be to him to accept of such a trust from me." Still Elliot was willing to translate such papers as were sent to him, and Clavering continued to employ him. After this, sometime in the middle of November (the report says January, but it is clear from the next page that November is meant), as Clavering was going to the Council-house, he was waylaid by a number of *malangis*, or salt-makers, who surrounded his palki and nearly upset it. The General stopped, and they gave him an English petition, which he read on his way to the Council. He saw in it evidence of what he thought a very gross abuse of power, and as other petitions had been presented to him in the streets, and been laid by him before the Council without any notice having been taken of them, he resolved to inquire into this one himself as well as he could. He therefore sent his servant to the salt-contractor's house to tell him to come to the General's on his return from Council. This salt-contractor was not Kamálddin, for the *malangis* belonged to the 24-Parganas, and Kamálddin was farmer of Hijli, and apparently had nothing to do with the 24-Parganas. When the contractor came, Clavering found that he needed an interpreter; the man teased him, he says, with evasions and contradictions, and so he sent for Mr. Fowke, and referred the complaint to him. "I did so," he says, "on account of Mr. Fowke's being a person of whose honour and integrity I had the highest opinion; more from general report which his reputation bore in England, than from any personal acquaintance with him hérē." Here I may remark that other persons besides the General gave Fowke a high character. Colonel Thoroton did so, and even George Vansittart. Hastings himself admitted that he never heard of his doing any dishonest or dishonourable act. Yet this is the man whose evidence Sir James Stephen rejects in favour of that of Kamálddin!

The salt-contractor did not like the case's being referred to Fowke, and complained to Hastings. Next day when Claver-

ing presented the petition to the Council, the Governor-General reproached him warmly for taking up a business in which he was so immediately concerned. Clavering did not understand his allusion at first, and Hastings said, "you must know that Captain Weller was connected with me." Clavering replied that he had been entirely uninformed of it, till Mr. Fowke had told him of it after the examination of the malangis. "The Governor then said many things against Mr. Fowke, but as Clavering did not see why Fowke should not have told him about the affair (either Hastings' connection with Captain Weller, or the particulars of the malangis' complaint), he refused to comply with Hastings' request that he would not trust any more petitions to Mr. Fowke. Some time after this, there was a petition from Baneshwar Ghose, which Clavering likewise referred to Fowke, after having previously sent to Kamáladdin. This reference produced another complaint of the Governor-General against Mr. Fowke (the *arzi*), requesting again that I would withdraw my confidence from Mr. Fowke; or, at least, that I would not suffer him to examine petitions but in my presence. As this complaint, and the petitions which accompanied it, were to stand upon our consultations, it was the opinion of the Council that Mr. Fowke should be desired to come there himself to explain his whole conduct. I assured the Council that if Mr. Fowke had acted improperly in the execution of the trust which I had committed to him, I would withdraw it. But the Governor-General not choosing that Mr. Fowke should come there to explain his conduct, I had no other means left than to examine him myself. At his returning (from Clavering's house ?) I desired him to write a letter to the Council and to give them the same explanation which had satisfied me: and I think, but am not positive, that I took his affidavit to the truth of the contents of the letter; but as I still thought that the assertions made by Kamáladdin should not, for Mr. Fowke's honour and mine, stand, I desired Mr. Fowke to examine his own servants, who had been present at the examination, and to send their depositions into the Council. The persons

themselves being examined, I was of opinion that all the assurances of Kamáladdin were entirely false and groundless. Mr. Roberts, my Persian interpreter, came to me soon after this, and from that time to this day, I am not conscious that I have ever sent one petition to Mr. Fowke.

"From the 15th November to the 20th December was the only time in which I sent petitions to Mr. Fowke." Hastings' touchiness about Captain Weller is explained by a letter from Hancock to his wife,* of 19th April 1772, in which he says that Captain Weller, "whom you know perfectly well," is a member of Mr. Hastings' family.† Hastings deposed (1179) that Kamáladdin complained to him in December, and said that Vansittart was present on the occasion.

A letter from Mr. Fowke to the Council, dated 18th April 1775 (1094-95), enables us to know that Kamáladdin complained to the Council on 13th December. Fowke's letter is so important that I give it entire :—

"To the Honourable Warren Hastings, Esq., Governor-General, etc.,
Council of Revenue.

"Honourable Sir and Sirs,—On the 13th December last, Kamáladdin Ali Khan delivered to your Board a paper containing many

* Mrs. Hancock was a Miss Austen and an aunt of Jane Austen. The father and mother of the latter commenced their married life with the chafge of George, the son of Warren Hastings. He died young of a putrid sore-throat, and Mrs. Austen had become so attached to him that she always declared that his death had been as great a grief to her as if he had been a child of her own. Mrs. Hancock's daughter (the Bessie of Hancock's letters I presume) married a French Count, who was guillotined, and she afterwards married her cousin, Henry Austen—(Memoir of Jane Austen by her nephew).

† There is an allusion to Captain Weller in a letter from Hastings to Dupré (Gleig, I, 300), but the fullest account is given in Hastings' observations on 15th November 1774. (Beng. App.) There he says: "I beg leave in this place to mention as a fact universally known, that one of the persons mentioned to have held a share under the contractor's name—Captain Weller—was a man to whom I bestowed that degree of protection which it was in my power to give him; and upon that account alone he came to Bengal and remained in it till his death; that, independent of the ties of affection, I feel a repugnance to rake out the ashes of the dead."

falsities injurious to my reputation, which I refuted upon my oath and the oaths of two other persons. He has now put another paper into my hands which I take the liberty of enclosing to you for my further justification. In this paper it is pretended, that the Governor-General was active beyond the limits of justice to forward a charge tending to my dishonour. If it contains a calumny, I shall rejoice to hear that the author has a brand of infamy set upon him, as a public warning to all calumniators and detractors. But, whatever may be the issue of the inquiry, it is evident that the Governor-General once thought Kamáladdin Ali Khan a person whose testimony was not to be rejected, when against me ; and therefore I hope I may be indulged in a request, that the recantation of Kamáladdin may have a place on the records, as well as his former accusation. Conscious of the respect I owe to Government, I cannot mention the Governor-General's name without pain, though essentially necessary to my own particular justification.

I have further the honour to enclose a paper which Kamál Ali-addin declares to have been the first account which he wrote with his own free will."

I am, &c.,
JOSEPH FOWKE.

This letter enclosed two papers purporting to be statements by Kamáladdin. The first, called in the depositions the long *arzi* (petition) and the great *arzi* (1214), was a long narrative of what took place in Mr. Hastings' house in December, and is the paper which Fowke and Nanda Kumar were afterwards accused of extorting from Kamál. The other was the original petition which Kamál presented to Hastings in December, and is spoken of as the small *arzi*.*

It will be observed that Fowke's letter speaks of his having refuted Kamáladdin's charges upon his oath and the oaths of two other persons. This is, no doubt, the examination to which Clavering referred in his deposition, and to which he alluded in his minute of 8th May when he called Kamáladdin an infamous creature, and justified the expression by the remark, that his veracity had been disproved by three

* *Vide Appendix for copies of the arzis.*

positive witnesses.* The small *arzi* (1097) shows us that Baneshwar Ghose's complaint against Kamál was about 5,000† māns of salt, and Kamál's evidence (1154) gives us the particulars of what took place between Kamál, Baneshwar, the General, and Mr. Fowke. Kamál says that Baneshwar complained against him to General Clavering, and that the latter sent for him. Kamál presented a *nazzar* of five rupis, but the General did not take them, and gave Kamál *pān*, and told him to come next day. He came, and the General wrote a letter and sent it, and another paper (doubtless Baneshwar's complaint) together with Kamál and Baneshwar to Mr. Fowke. When they arrived, Radha Charan was with Mr. Fowke, and they waited downstairs till he had gone. Then they went up, and Mr. Fowke proceeded to question Kamál about Hijli and its revenues. Baneshwar then told Fowke that Kamál had rented the thika khalaris from English gentlemen at a great expense. "What do you mean by a great expense," said Fowke, and Baneshwar explained that Kamál had spent a great deal in giving bribes to English gentlemen. Fowke asked Kamál if this was true, and he said it was false. Mr. Fowke replied, "you have given rupis to the English gentlemen." Then young Fowke came in, and there was a great deal of conversation between them, and young Fowke allowed Kamál to go, and told him to come next day. He did so, and Mr. Fowke asked him if he had not given money to Mr. Vansittart. He denied it, and Mr. Fowke got angry, and he and his son talked together in English, and Kamál was again allowed to depart. The third day Kamál again went, and was asked again about the giving of bribes. "I said, I had given nothing to anybody." He said, "you speak this without reason." I then said, "I am a farmer, and no thief." Kamál then came home, and afterwards went to the General's, but he was out.

* It appears that one of these witnesses was Mahomed Mashraf, a munshi of Mr. Fowke.

† A man of salt was 82 lbs., so that the total quantity would be about 188 tons.

Question.—“What did you do next?” “I came home and considered in my own mind, whatever has passed between Mr. Fowke and me, if I write, and give (?) so much, I do not know whether the Governor would be angry with me? Therefore I did not write much; but having caused a little to be wrote, I went and gave it to the Governor, and I told him all by word of mouth.”* The Governor said, “You have wrote in your *arzi* little, and by word of mouth you say a great deal; whatever you tell me by word of mouth write down in an *arzi*, and I will inquire about it in the committee.” I answered, “I have not my munshi with me; I will write it out, and bring it to-morrow morning.” The Governor answered, “If you have not your munshi with you, take mine, and whatever you have to write, he will write it.”

* In another deposition (1193) he said: “I had numberless thoughts in my own mind; but I went and gave the small *arzi* to the Governor, for this reason, that the Governor was a great man and Mr. Fowke an Englishman; and that if I wrote a good deal, he might be angry.” Sir J. S. (I, 82) calls Fowke a European, as if to imply that he was not an Englishman, and says that he was bitterly opposed to Hastings. Fowke was an Englishman and a friend of Dr Johnson. I am not aware that he was bitterly opposed to Hastings, until Hastings prosecuted him. He was introduced to Hastings by the latter’s patron, Sir George Colebrooke, and Hastings promised to do all he could to serve him. (Gleig, I, 190.) Hastings admitted (1200) that he might have told Fowke that he must part with scruples if he meant to be served. He denied that his meaning was that he should part with his integrity, but still “parting with scruples” was a curious expression.

Fowke must have tried to induce Dr. Johnson to take up the subject of Nanda Kumar, for in April 1788, the latter wrote, “of the death of the unfortunate man (Nanda Kumar), I believe Europe thinks as you think, but it was past prevention, and it was not fit for me to move a question in public which I was not qualified to discuss; and I might have been silenced by a hardy denial of facts which, if denied, I could not prove. . . . Whatever you do, I do not suspect you of pillaging or oppressing, and shall rejoice to see you return with a body unbroken and a mind unclouded.”

Fowke’s threatening to knock down Kamáladdin with a volume of Churchill’s *voyages*, reminds us of Johnson’s adventure with Curll.

"The words the Governor then used in the Hindustani language I did not understand. He desired Mr. Vansittart to explain them to me in Persian; then Mr. Vansittart explained them to me, that the Governor had said, 'my munshi is here; do you cause it to be wrote by him.' I agreed to it; and the Governor called his own munshi, Shariyat Ula Khan, and told him, 'whatever this man has to write, do you write for him.' I then caused him to write whatever had passed between Mr. Fowke and me; having wrote it, I gave it to the Governor, and the Governor having caused it to be read to him by the munshi, he kept it and gave me my dismission, and returned me the small *arzi* I had given him. I then came to my own house." On being asked the dates of these occurrences, Kamál said that he did not remember when he got the letter from the General, but that the conversation with Fowke (apparently that on the third day) was either the last day of Agrahan, or 1st Paush. The first Paush, however, seems to be 14th December, and so, if Fowke was right in saying in his letter that the petition of Kamál was laid before the Board on 13th December, Kamál's memory must have been at fault. It is important to notice that Kamál gave the dates more correctly in the long *arzi* (1095). He asserted afterwards that this petition was extorted from him, but he admitted that it was written by his own munshi, and that he himself made it over to Nanda Kumar. He admitted, too, that it was written on 6th Baisakh, that is, 17th April (1080), and consequently two days before he complained to Hastings or Impey. Here it may be well to note that there was no assertion by Kamál that Fowke had made him write the long *arzi* at his house, though the charge, as drawn by Mr. Pritchard, implies this. What Kamál alleged was that Nanda Kumar got him to draw up the petition on 17th April, and then sent it over to Fowke. Afterwards Fowke asked Kamál to seal it, and it was this apparently that Kamál objected to, rather than to the contents of the petition.

Mr. Fowke said, "seal this, and give it." I said, "there is no agreement between Maharaja and me to seal; it is not an

arzi, it is a *jawab-sawal*.* In fact, the petition was written out on Saturday, the 4th Baisakh, that is, 15th April, as Nanda Kumar's deposition shows (1083), and Kamál's own account requires that it should have been written at least as early as 5th Baisakh, for the 8th Baisakh was the 19th April, and the day after the alleged extortion of the sealing by Fowke. For the reasons that the long *arzi* was written by Kamál's own munshi, that its statements substantially agree with the other evidence in the case, including even the depositions of Hastings, Vansittart, and Shariyat Ula Khan (1179-85), and also because the jury found that Fowke had not extorted it from Kamál, I believe that the said paper is a correct narrative. The paper is very long, but it is very important, and I have therefore inserted it in the Appendix. It begins with stating that it is a declaration on the faith of Kamál's religion. It is thus, in fact, an affidavit. There is, therefore, no relevance as regards this petition in Sir James Stephen's view, that natives look upon common falsehood as fair play, but regard perjury with horror (Vol. I, pp 204 and 206). Here I may observe, that though I have sometimes heard ignorant Englishmen speak as Sir J Stephen does, of what he calls the current native view about falsehood, I have never seen it exemplified in practice. My experience is, that if a native is truthful, he is so equally with or without an oath, and that if he is not, the oath makes no difference to him.

The petition goes on to say that Mr. Fowke heard both sides, and then dismissed Baneshwar and Kamál. On the same evening the latter went to see his friend Sadaraddin Munshi, and told him what had occurred. Sadaraddin advised him to relate it to Ganga Govind Singh. * Kamál objected to do so at first, but on 19th Agra han, he did go and tell Ganga Govind, who said nothing, but went off to the darbar. The report writes it Faghun, but it is clearly Agra han that is meant.

* Not a petition, but an examination or altercation. *Jawab-sawal* literally means question and answer, and has so been translated by Haji Mastapha in a passage quoted by Sir J. Stephen.

Next day, 3rd December, at noon, Munshi Sadaraddin sent for him, and told him that Ganga Govind had told Mr. Graham about Fowke's interrogatories, and that Mr. Graham had gone straight with the news to the Governor, and had then come back and told Sadaraddin to send for Kamál, and tell him to write a petition on the subject, and deliver it to the Governor. Kamál drew up a petition and shewed it to Sadaraddin, who told him to take it to Ganga Govind, adding, "what I now tell you is by the direction of Mr. John Graham." Ganga Govind told Kamál to put in about Fowke's asking about the douceurs, to which Kamál replied that Mr. Fowke had not said so to him. Then Kamál went back to Sadaraddin, and while he was there, Ganga Govind came in, and the two told him that he need not be afraid, and that he should write a petition. He did so, but did not deliver it, and on 26th Agra han (9th December), Ganga Govind said to Kamál, "You have not yet delivered the petition, and Mr. Graham is very angry about it; you ought to go immediately to the Governor, deliver your petition, and wait upon Mr. Graham tomorrow with the account of your having done so, and I will be at Mr. Graham's at that time too." Kamál immediately went (this would be on 9th December), and delivered his petition. Hastings objected that it was different from the account that had been given him by Mr. Graham. Then followed the writing of another petition by Hastings' munshi, as related in Kamál's deposition.* Next day, the 10th December, Kamál

* According to Kamáladdin, Hastings spoke Hindustani very imperfectly. He says "the words the Governor then used in the Hindustani language I did not understand. He desired Mr. Vansittart to explain them to me in Persian; then Mr. Vansittart explained them to me, that the Governor had said, "My munshi is here, do you cause it to be wrote by him." If Hastings could not say even so much in Persian, or intelligible Hindustani, he must have been less proficient than his friend Impey in knowledge of the native languages. Barwell was even more ignorant. Sadaraddin was asked whether he had told Barwell about Kamáladdin's complaint concerning the arris, &c., as Kamál had asked him to do (1080), and he answered, "There were but four *gharis* of the day remaining. I acquaint ed Mr. Barwell of something; but he does not know the language; I told

went and told Vansittart and Rajballabh, though it appears (1156) that Vansittart had already been present at the interview between Kamál and Hastings. Hastings, Vansittart, and the munshi of course say that Kamál voluntarily dictated the petition, but the important thing is, that it was written by Hastings' munshi, at Hastings' house, and that the petition with which Kamál went to Hastings was the small *arzi* (1097), which says nothing of Fowke's inquiring about douceurs. "The petition," says Hastings, "was in terms so brief and general, that I returned it to him, telling him that as he had stated it, it did not amount to a complaint." Vansittart's evidence is to the same effect. "Mr. Hastings was in the south-east room of his house; Kamáladdin was there, and others, when I went in; Mr. Hastings told me that Kamáladdin had been complaining that Mr. Fowke had threatened him with punishment, if he did not deliver an account of *baramads* ;* that he had been relating everything very circumstantially by word of mouth, but had given in a petition very short, and of no kind of consequence." It is important to point out that Ganga Govind Singh was present then (1185). No doubt this would have its effect in putting Karpál under constraint. It is an unfortunate circumstance that the petition which Shariyat Ula wrote out has not been published in the report, though it appears to have been produced at the conspiracy trial (1168), was laid before the Board, and is printed in the Bengal Appendix.

I have been thus minute in describing the occurrences of December, because Sir J. Stephen passes them over in silence. It will hardly be credited, but it is the *case*, that he says nothing whatever about Kamál's petition of December. He represents him as coming for the first time to Hastings on 19th April, and expatiates on the caution with which Hastings acted then, and the care with which he tested

him but little." And yet these were the two men whom the Regulating Act put into Council on account of their knowledge of India !

* Literally, a coming up, or out, but meaning informations about corruption. The word is supposed to be the original of verandah.

his statements (Vol. II, pp. 46, 51). He does not tell his readers that Hastings had reason to be shy of trusting Kamál, or that he had not been so circumspect in December. Hastings then took up the case so eagerly, that he insisted on Kamál's having the complaint written out there and then, and he took this petition, which his own munshi had written out, and presented it to the Board.

The proceedings are fully detailed in the Bengal Appendix, pp. 511-23, and I have placed portions of them in my appendix. The important point is, that Fowke was not punished or prosecuted then, and that he vindicated himself to the satisfaction of the majority by his own evidence and that of his servants. Surely these facts have an important bearing on the credibility of Kamál. It is also to be carefully remembered that Fowke and Nanda Kumar were found not guilty of having extorted the *arzi*, that is, the great *arzi*. In other words, Kamál's charge on this ground was found false. This verdict never was reversed, for the charge in Barwell's case was about another paper, *viz.*, the *fard*. The *arzi* was not an item in that charge. Thus then we have an unchallenged verdict that Kamál had lied about the *arzi*. Thus he was twice found to be a liar, once in December by the Council, and again in July by a jury.

Sir J. Stephen cannot understand why the jury found for the defendants in one case, and for the prosecution in another. Nor can I fully explain it*. One explanation, however, is that the charge in Barwell's case was only about the *fard*, and the jury may have believed that the evidence about this was confirmed by Fowke's observations. It may have been, too, that the jury convicted in Barwell's case because so little evidence was given for the defence. The four writers who

* The difficulty is, that evidence was given in the Hastings' case about Fowke's question to Barwell, both Vansittart and Elliot deposing about it, and yet the jury acquitted. When Sir J. Stephen observes in a note (Vol. I, p. 102) that the jury afterwards seem to have found that there was such a paper as the *fard*, he leaves out of view the fact, that on this point we have the verdict of one jury against another.

were present at Fowke's house, and two of whom attested the great *arzi*, were not called, though they were alive and in Calcutta. Lemaistre, J., asked a question about this, and it is possible that, in charging the jury, stress may have been laid on the absence of these witnesses. But then it does not appear that they were examined in Hastings' trial either, though they were at the preliminary proceedings. Perhaps it was understood that a severe punishment would not be inflicted, and that it was on this account that all the witnesses were not examined. At all events, the fact that Fowke was only fined Rs. 50 seems to indicate that the Judges did not concur with the verdict, or had small sympathy with Mr. Barwell. When Sir James Stephen (at pp. 84, 86, and 88) argues in favour of Kamál's story about the *arzi*, in opposition to the account by Fowke and others, he not only prefers believing a man whom he himself calls a very poor creature, but he overrides the verdict of the jury! One would be glad to know how he defends such a position. Unless he chooses to say "*Kamalus est mihi instar omnium*," I do not see what he has to stand upon.

I observe that Sir J. Stephen implies (202) that the question of the extortion of the long *arzi* was in issue in both cases, the effect being to lead his readers to suppose that the two verdicts are irreconcilable, and that the one in Barwell's case supported Kamál's story about the *arzi*. This, however, is a mistake. There was no charge in Barwell's case about the long *arzi*, and there could not be, for he was not mentioned in it. The sole charge in Barwell's case was about the *fard*. On the other hand, there were two charges in Hastings' case, one about the *arzi*, and the other about the *fard*. The prisoners were acquitted on both counts, and so far as the *fard* is concerned, the verdict was contradicted by that in Barwell's case. But there never was any contradiction about the *arzi*. It is curious that the existence of the *fard* was the point about which Hastings had doubt; he was clear as to the *arzi*, but he thought at first that Fowke might be innocent about the *fard*. In my opinion this doubt was just. If the *fard*

had ever existed, Fowke would surely have taken the attestation of two witnesses to it as he did with regard to the *arzi*.

The next thing that we hear of Kamál is, that he was arranging about his son's marriage. This was sometime in Phalgun (11th February to 11th March). He lived at Hugli, and it was necessary for him to go home and settle the marriage. He therefore went to see Nanda Kumar in order to get his dismissal (*rukhsat*), and to ask the Maharaja to honour him by receiving sweetmeats from him on the auspicious occasion. Kamál, both according to his own account and Nanda Kumar's, was an old friend of the latter. In his evidence in the forgery case, he said that Nanda Kumar had been his father's and his grandfather's friend, and that he himself had been protected by him since he was ten years old. Similarly, Nanda Kumar said (1082) that Kamál had been with him in his childhood for two or three years. Apparently, however, they had quarrelled, and it was in order to become reconciled that Kamál went to Radha Charan and asked him to get his father-in-law to accept the sweetmeats. Radha Charan agreed to mediate, and told Kamál that the Raja's house was his old home, and that he must be on terms of friendship with the Maharaja. According, too, to Kamál, Radha Charan bragged of what his father-in-law had been doing about the Governor, &c., and said : " What they have ate they will be obliged to disgorge ; and will be put to shame in their own country, and will be called thieves."

We are not told what the previous quarrel between Kamál and the Raja had been about, but in all probability it related to Fowke's affair of December. Kamál went off to Hugli, and did not come back till the end of the month. He said (1159) that he returned on 30th Phalgun, or 1st Chait, and that on the first day after his arrival he paid his respects to the Governor, Mr. Vansittart, and *all the gentlemen*.* The second day he went to see the Raja. The Raja was not at home, and so Kamál sat down in the *diwankhana* (hall of audience), but in

* Kamál evidently was desirous of keeping in with both parties.

a little the Raja came in, and Kamál presented his *nazzar* of one goldmohur (Rs. 16 or 17). The Raja first politely asked about the marriage, and then said : " Did you hear at Hugli what passed between the Governor and me, and how I have proved him to be in the wrong ? " Kamál said he had heard something about the *baramads*. Kamál had another object in visiting the Raja, *viz.*, to borrow Rs. 3,000. He asked for it, he says, on 1st Chait, and got the loan on the 13th or 14th. The 1st Chait was Sunday, the 12th March, and so, just one day after Nanda Kumar had presented his petition against Hastings. I beg to point out here to my readers, that all this intimacy with Nanda Kumar, and this borrowing of money from him, took place after Kainál, according to his evidence in the forgery case, had found out that Nanda Kumar had been forging his name, and had on that account magnanimously declined to ask him to be his security ! Apparently Kamál had now fallen from the moral elevation he had attained in 1772 or 1773. The next incident was Kamál's presenting three petitions to Nanda Kumar, two of them against Ganga Govind Singh, and the other against Mr. Archdekin.* This occurred in the latter end of Chait (1081), and consequently some time in the beginning of April. Kamál said that he asked Nanda Kumar to give the petition against Archdekin to the committee, but to keep those against Ganga Govind by him. Why he should have made them over to Nanda Kumar if he did not wish them presented it is difficult to imagine. Kamál's story is, that he did not want them filed, as his only intention was to frighten Ganga Govind. He also says that the contents of the petitions were not true. " I don't deliver them in as complaints," he said to Radha Charan ; " was I to complain, I would complain of what is true. In order to frighten him, I have wrote what I pleased myself." This was at least candid on the part of Kamál, but Sir. J. Stephen is resolved Kamál should be protected against disparagement, even by himself, and so he says that

* The Salt Agent.

he can see nothing disingenuous in Kamál's petitions (Vol. I, p. 205 note).

Whether Kamál's complaints against Ganga Govind were true or false, it seems to me impossible to doubt that they were intended as "*baramads*," and that they were given in support of Nanda Kumar's schemes. It is impossible to believe that Kamál would give them to Nanda Kumar when he knew that the latter was bringing charges against the Governor, unless he meant Nanda Kumar to use them. Ganga Govind was a member of the Government and connected with Hastings. He took an active part in getting Kamál to go to Hastings in December with a complaint against Fowke. He was also the man who long afterwards, in concert with Devi Sing, so infamously distinguished himself in Rangpur and Dinajpur.*

Another thing which proves the intention with which he (Kamál) presented the *arzis*, is that the Maharaja had previously been speaking to him about *baramads*. According to Kamál the Raja spoke about nothing else. "Whenever I went," he says, "he conversed with me on no other subject but the *baramads*." When, therefore, after such conversations Kamál gave in *baramads* about Ganga Govind, what could Nanda Kumar understand except that he was to present them? It was about Hijli and other salt estates that Nanda Kumar invited Kamál to give *baramads*, and lo! here he brought him three.

In order to understand what was the dispute between Kamál and Ganga Govind, it is necessary to say something,

* Many years afterwards (1787) when Hastings was being impeached and was anxious to collect the suffrages of the natives of India in support of his administration, the first name he mentioned amongst those of men who could help him was that of Ganga Govind Singh. (Gleig, III, 323.) It is important to note that Ganga Govind was dismissed by the majority in May 1775 on account of the transactions referred to in Kamál's petitions. Granting that this was unjust and the result of spite, still it shows that the Council acted on the *baramads*. This, and the fact that G. G. Singh paid Rs. 10,000, if not Rs. 26,000, in order to buy off Kamál's opposition (for this is what the arrangement made by Sadaraddin amounted to), show the ticklish position of affairs, and how anxious G. G. Singh and his friend Sadaraddin must have been to win back Kamál to their side.

about Kamál's position as a salt-farmer. Kamál was the farmer of Hijli. This was formerly a district or *chakla* consisting of the parganas of Tamluk, Mahishadal, &c., but is now part of Midnapur. It was a salt-farm, but not entirely so. There was also land, and Kamál had to pay or collect Rs. 75,000 in land-revenue, besides furnishing a large quantity of salt. Sadaraddin Munshi speaks of Kamál's being a competitor for the farm in Asarh 1179 (June 1772). It is probable, however, that the arrangements about the salt did not come into force till the cold weather of 1773, for nothing could be done about salt in the rains, and the scheme for the settlement of salt-farms was not propounded till October 1772. (Harington, II, 381.) One of Kamál's petitions, too (1099), speaks of the settlement of Hijli being made in 1180 *Vilayati** (October 1772).

We learn (Harington, III, 659) that there were two ways of managing the salt revenue; one was known under the head of *Khazana*, and the other under the head of *Thika*. In the first instance, the land-revenue was paid wholly or chiefly in salt, and in the other, the *khalaris* or salt-works were let out at a certain rent or *thika*. Kamál was interested in both arrangements. He farmed Hijli, and paid in salt and in cash, and he also held 401 *thika khalaris*. It was about the latter that Baneshwar Ghose complained to General Clavering in the beginning of December. Baneshwar Ghose, as Kamál's petition (1097) shows, had to do with the *thika khalaris*, and complained against Kamál about 5,000 mans of salt. Kamál calls him his *raiyat* (1154), and this is explained, I think, by the evidence of Hastings (1179). He says—"Kamáladdin, in the month of December, complained that Mr. Fowke had attempted, by promises and threats, to extort from him a declaration that he had given bribes to English gentlemen and *matsadis* for the grant of the *thika khalaris*, or the adjustment of accounts relative to them (I am not certain which). These were salt-works, not originally included in the lease of the

* An era current in Orissa and beginning 592 A.D.

farm of Hijli, but worked by other farmers, by people brought from other parts, and afterwards given to the farmer of Hijli to prevent competition."

It was these *thika khalaris*, too, which Kamál sublet in Baisakh 1181 (April 1774) to Hastings' banyan, Kanta Babu. The petition (1100) speaks of Babu Leekenace and Nundee as the sub-lessee, but I need hardly observe that this is a misprint for Lok Nath Nandi, the infant son of Kanta Babu, in whose name he took Pargana Baharband. This agrees with the remarks of General Clavering in the minutes of 30th December 1774 and 12th May 1775 about the connection between Kamáladdin and Kanta Babu. .

The arrangements for the salt-farms, as given in Harington, were briefly as follows: The farmer engaged to deliver a certain quantity of salt yearly to the Company at a fixed price, and he also agreed that he would deliver to the Company any surplus salt which he might make, at an advance of Rs. 25 on the contract price. He was not to sell salt except to the Company. In consideration of these stipulations, he got an advance of three-fourths of the value of the salt that he was to deliver. It is clear that unless he got this advance he could not work his farm, for he could not pay the *malangis*. Kamál speaks of taking the farm of Hijli for five years (1082), but perhaps this did not include the salt, for it appears (1098) that he took the salt-works in certain parts of Hijli on a four years' lease in Magh 1181 (January 1774). The agreement was that he should supply a lakh of *mans* of salt at a rupi a *man*, and that he should get an advance of Rs. 60,500. After this Ganga Govind, by an underhand settlement, persuaded Kamál to agree to pay him Rs. 26,000 on the understanding that Ganga Govind would induce the Government to forego all claim to any salt which Kamál might make over and above the stipulated lakh. This surplus Kamál was to be allowed to dispose of as he chose, and to keep the profits to himself. In other words, the two arranged to cheat the Government. Upon this agreement, Kamál paid Ganga Govind Rs. 15,000. Next month Kamál asked Ganga Govind to give up the salt (the

surplus salt, I presume), but Ganga instead of doing this took Rs. 15,000 more from him. The result was that Kamál could not pay the salt-workers, and they complained against him; Kamál said further, that he was a poor man, and that he was utterly at a loss where to raise the money so as to complete the investment. He therefore prayed that the diwan should be summoned and ordered to return his money with interest. There was also another complaint against Ganga Govind for oppressing the raiyats and salt-workers of Hijli. We are told that the dispute between Ganga Govind and Kamál was afterwards settled by their common friend, Sadaraddin Munshi, that is, by the man who was then the munshi of Nanda Kumar's special enemy, John Graham (1147), and was afterwards in the service of Mr. Barwell. Ganga Govind, it is said, paid Kamál Rs. 10,000 and wrote off Rs. 16,000 of Kamál's debt for land-revenue, but this was no proper settlement if Kamál's petition was true. According to it, Ganga Govind took from him Rs. 30,000, and moreover did not fulfil his bargain about the surplus salt. I do not think that any candid mind can accept Kamál or Sadaraddin's account of these transactions, or doubt that Kamál was induced by underhand means to withdraw the charge against Ganga Govind.*

* Hastings restored Ganga Govind to office in November 1776, i. e., as soon as he got the power into his hands. On 12th May 1775, Hastings gave a curious illustration of what he considered the one thing needful in a public servant. He said, "I have heard him (Ganga Govind) loaded, as I have many others, with general reproaches, but have never heard any one express doubts of his abilities." When Hastings took back such a man after his dismissal, he became responsible for all his subsequent enormities. Mr. Peter Moore, when examined in Hastings' trial, gave very strong evidence against Ganga Govind. He also referred to Kánta Babu's zamindari of Baharband, and said that the engagement was for Rs. 82 or 83,000, while the settlement with the raiyats was for Rs. 3,53,000. In July 1774, Hastings described Lok Nath Nandi as a man of credit, and therefore a proper person to have charge of the Baharband zamindari. Lok Nath was then a mere child, and when the majority taxed him with this description of him, Hastings replied that everybody knew that the practice of *benami* was prevalent in India, and that his description referred in fact

Nanda Kumar was examined at the preliminary inquiry on 20th April, and the circumstantial account which he there gives, makes us regret that he was not similarly interrogated when he was committed for forgery. I suppose that the Judges were in too great a hurry on that occasion to examine him fully.* His statement (1082) is, in substance, that Kamál came to him and complained about Ganga Govind Singh's having taken Rs. 26,000 from him, besides Rs. 300 or 400 that his servants had taken. He said that Sadaraddin and Ganga Govind were in friendship, and that though he had several times demanded his money from them, they would not pay it. Nanda Kumar said that if that was so, the only remedy was to complain to Council. On another day Kamál brought two petitions, and Nanda Kumar, after reading them, sent, at Kamál's request, his son-in-law, Radha Charan, with Kamál, to Mr. Fowke. This so far agrees with Kamál's account that he too admits that he went with Radha Charan to Mr. Fowke's. He denied that he gave Mr. Fowke the *arzis*, but it is not clear why he went to see a man with whom, as he says, he had a quarrel in December, unless to get him to give in the *arzis*. Mr. Fowke's letter, too, of 25th April (1097), is, I think, sufficient to show that Kamál took the *arzis* to him. Nanda Kumar went on to say that some days elapsed after the giving of the *arzis*, and that on 5th Baisakh he was at the General's when he got a message from Radha Charan that he and Kamál were at the house of Mr. Fowke, and asking him

to Kanta, who was the real farmer. Kanta, however, told the majority that Lok Nath was the real farmer, and that if he died, the farm would lapse to the Company. This shows the little value which is to be attached to Hastings' explanation of the relation between Kanta and Kamáladdin, and, indeed, Hastings stated that he knew very little of his banyan's affairs.

* This examination has lately been discovered in the High Court Record-room. It is very short, and merely states that, after the depositions had been read to him, "this examinant denies all and every the matters and charges therein contained, and doubts not to prove the falsity thereof."

The paper has the Persian signature, Nanda Kumar, appended to it in his own handwriting.

to call in as he went home. He did so, and Mr. Fowke asked Nanda Kumar to examine Kamál, and inform him if his representations were true. Nanda Kumar then went home, and at 7 P.M., Kamál came to his house with a munshi, and bringing the draft of an *arzi*. This was found not to be well worded, and the munshi, Khuda Newaz, began to make a fresh draft. Before he had got half through it, Kamál, who had been ill in Fowke's house in the daytime, was obliged to leave on account of illness. His munshi remained and finished the paper. It was then sent by Nanda Kumar to Kamál by the former's servant, Yar Mahomed, to be sealed. Yar Mahomed here takes up the story (1084), and states that he went to Kamál with the *arzi*, and that Kamál sealed it, saying that he wrote it, and that if a hundred Koans were put on his head, he would swear to the truth of every word of it. Khuda Newaz, the munshi of Kamáladdin, did not admit (1171) that his master sealed the *arzi*, but he admitted, as did also Kamáladdin, that Yar Mahomed came to get it sealed.

There is also a curious statement by Kamál's *khansama* (steward), Husein Ali (1172), that Khuda Newaz met him on the stair, and told him Kamál was going to seal a paper, and so he had better bring the *sikka-dawat** He did so, he says, and waited on the stair, but the seal was not required. According to Nanda Kumar, he did not see the *arzi* again till next morning. It was sealed, and he told Radha Charan to take Kamál with it to Mr Fowke. He says this was on Sunday, and therefore it appears that it was the 4th Baisakh when he visited General Clavering, &c. (5th Baisakh was Sunday, the 16th April)† This, too, is supported by Sadaraddin's evidence (1177), who says that, on the night of 3rd or 4th Baisakh, Kamáladdin told him that the Raja was wanting him to write an *arzi* about the *thika khulari* business, evidently that of Baneshwar Ghose, in such a way

* The standish containing stamping ink.

† There may, however, be a mistake of a day in Reid's Chronological Tables. Kamál (1080) speaks of Wednesday the 19th as being the 9th Baisakh.

that the Governor and Mr. Graham might get a bad name. Here I may note that Sir J. Stephen is incorrect in saying (I, 85) that Nanda Kumar deposed that Kamál pressed Fowke to deliver the petition. "On Sunday," says Nanda Kumar, "Kamál gave the petition to Mr. Fowke, and on Tuesday, Radha Charan went to Mr. Fowke's, and there the *arzi* was, with Kamál's consent, attested by two witnesses." In the evening Kamál came and begged Nanda Kumar to use his influence with Fowke to make him give in the petition against Ganga Govind Singh before the other one. Nanda Kumar agreed, and went on the Wednesday morning to Mr. Fowke's, but Fowke said he would do what was proper. "When I was going, Kamáladdin represented to me that it was very hard upon him that the *arzi* against Ganga Govind was not delivered; for, if the other was given in first, he feared he should get no advantage from that. I advised him to be patient, and to give in his *arzi* to the Council, where he would obtain redress. He would not attend to what I said, but ran to the Governor's."

I cannot say if the whole of this account is true. Nanda Kumar was on his defence, and no doubt gave the best side to his own case. But I am sure it is much more true than Kamál's account. It is more probable, and it is supported by the verdict of the jury who found that the *arzi* was not extorted. What I think clear is, that Kamál was dissatisfied with Ganga Govind and Sadaraddin, and was terrified at the consequences of his not fulfilling his salt contracts. He therefore had recourse to Nanda Kumar, more especially as his friend Sadaraddin was not then in Calcutta. Kamál offered Nanda Kumar the *buramads* against Ganga Govind, and Nanda Kumar gladly accepted them, as they strengthened his case, and probably, in order to bind Kamál still more to his interests, made him a loan of Rs. 3,000. Nanda Kumar was working through Fowke, who had the ear of the General, and so sent Kamál to him, and as a peace-offering, got Kamál, or Kamál agreed of his own accord, to give a recantation of his complaint of December.

Kamál, however, was frightened about this petition's going in, and knew it would not help him to get his money from Ganga Govind, which was all that he cared about. Meanwhile also, Sadaraddin came back from the country, and persuaded Ganga Govind to give Kamál Rs. 10,000. No doubt he, at the same time, induced Kamál to come back again to their side, and so Kamál went to Mr Fowke on Tuesday, the 18th April, and tried to prevent him from sending in the *arzis* on that day. It seems to me that the fullest and fairest account of what took place on 18th April is given by Francis, the son of Joseph Fowke. He admits Kamál's distress, and also proves that Kamál sealed the small *arzi* in his father's house, and acknowledged the great *arzi*. He proved also that the great *arzi* was attested by two of his father's Portuguese writers, and that he (young Fowke) by mistake wrote 17th April on one of them. His evidence went to disprove the existence of the *fard*. How Nanda Kumar was convicted in Barwell's case, I cannot comprehend, for Fowke's indiscreet behaviour in Court was only evidence against himself, and there was apparently not a particle of proof that Nanda Kumar had anything to do with the *fard*. According to Kamál, it was all the doing of old Mr Fowke. Perhaps the jury thought that, as Nanda Kumar was already condemned to be hanged, a conviction in the conspiracy case could not hurt him; but surely it is some evidence of the recklessness of Calcutta juries of the day.*

Sir J. Stephen asks (I, 88) why should Kamál rush off to Hastings with his complaint unless what he said was substantially true? But where does Sir James find that he did "rush off"? The alleged extortion of the *arzi* and the *fard* took place on the morning of Tuesday, the 18th April, and Kamál did not appear before Hastings till the next day. The indictments in both the conspiracy cases are wrong in giving the 19th April as the day of the extortion. All that happened

* I have further on given reasons for doubting that Nanda Kumar was found guilty. See p. 186.

on that day was, that in the morning Kamál went to Fowke's to try and get his *arzis* back, and when he did not succeed, he went off in his palki to Hastings'. It appears (1150) that he went to Raja Rajballabh first on the 19th, and if, as appears to have been the case (Gleig, I, p. 523), Hastings was then at Belvedere,* it is difficult to see how Kamál could still be out of breath when he came before him. He had plenty of time to cool down during the *palki* journey from Calcutta to Alipore. There was no *rushing* in the matter. Kamál left Fowke's house before 1 P. M. on the 18th (1213). He did not go to Mr. Hastings that day, as he might have done. He went to the Maharaja and to Sadaraddin, and the latter went to Barwell and Van-sittart. Apparently what made Kamál start off at the last was, that he saw Mr. Fowke going out, and believed he was going straight off to put in the petitions. As a fact, Fowke did put up the *arzis* into an envelope on the 18th, at least he dated the letter the 18th, but they were not delivered till the morning of the 20th, when young Fowke brought them to Auriol while he was at breakfast. Nor can I see any sign of circumspection on the part of Hastings, for he sent off Kamál to complain without ever having seen the *arzi* alleged to have been extorted ! (1079).

According to the reporter's note (1077), Kamál made his appearance before Hastings at 9 A. M. on the 19th April, but this note is not evidence, and it is opposed to the deposition of Khuda Newaz, who says (1171) that Kamál and he went to Mr. Fowke's at one and-a-half *prahars* of the day (about 10-30 A. M.), and that they were there for about three or four *gharis* (hours).^{*} Another witness, Masharer Rahman (1176), says that the dispute occurred at about six *gharis* of the day, but even this would not allow of Kamál's getting to Belve-

* The local tradition is, that this Belvedere was not the residence of the Lieutenant-Governor, but a house some distance to the south of it, and now known as Hastings' House. But the Belvedere of Upjohn's map of 1792 appears to be the present house of that name. Hastings' Belvedere was advertised for sale in October 1784.

dere by 9 A. M., especially as he went first to the Rai Rayan Rajballabh. Rajballabh was one of the persons whose names were said to be entered in the *fard*, and who were invited afterwards to prosecute, but declined. We are not told that Kamál had an interview with him that morning, but this seems implied by the question, "After you went to Raja Rajballabh, whom did you first apply to?" Khuda Newaz, too, says that he went on foot with Kamál's palanquin as far as Raja Rajballabh's (1172). Very likely it was Raja Rajballabh who put up Kamál to go to Hastings. When Kamál got to Hastings and explained his business, Hastings said that he could not do him justice, as they, the other Councillors, were three, and he was only two. He advised him to complain to the King's Court, and sent him with a *chobdar* to the Chief Justice. According to Kamál, this was to protect him against the myrmidons of Mr. Fowke, but, according to Hastings, it was to prevent his being detained by the servants of the Chief Justice (1181). But Hastings did more than this. He wrote a note to Impey, and sent it by one of his private servants * (1181). I suppose that Sir J. Stephen will hardly defend this, for he says (I, 236) that the writing of a letter to a Court on a matter judicially before it is unconstitutional, and he adds, that a Home Secretary would never dream of writing to a Judge as to the exercise of his judicial duties. Any such application would have to be made by counsel in Court.

But the important thing to notice is, that we hear nothing of Impey's refusing to receive a private communication. On the contrary, he acted on it, heard Kamál (1077), and then summoned the other Judges to meet him in the evening. Where was the virtuous indignation which the Judges showed afterwards when the Council addressed them by letter? The Judges could then say, "It is contrary to the principles of the English constitution for any person or persons to address a Court of Judicature by letter-missive concerning any matter

* He also sent D'Oyley to translate for Kamál.

pending before such Court, and that the higher the station is, the act is the more unconstitutional." It is true that Impey was not present when this resolution was come to, but he adopted it in the proceedings of June 23rd. Kamál was examined by the Judges on the 19th, and then summons were issued calling on the parties to appear next day. The place fixed was Impey's house, and the examination went on there till 11 P.M. On this occasion Elliot interpreted. On the previous day, Sir John D'Oyley officiated, having for this purpose absented himself from his post at the Council Board. After the examination, the Judges called upon the persons affected by the supposed conspiracy to declare if they would prosecute, and gave them up to Monday, the 24th, to decide. This was on the Thursday night, and next day took place the visit of the Councillors to Nanda Kumar, of which so much has been made.* I do not see anything very improper in it, but no doubt it offended the Judges. Meanwhile, Hastings was not idle, for he sent for Kamáladdin to Belvedere on the Saturday and Sunday, and examined him about his complaint. He says he took the precaution of asking the Judges if he might do so, and no doubt he did, but this seems to show that he or his friends thought Kamál a slippery customer whom it was necessary to keep to the mark. He had been three times examined already, *viz.*, at Hastings'

* When the Councillors were taxed with this visit, they retorted by saying that Impey had visited Khwaja Petrusse, who had signed the address in his favour. Impey rejoined : "We (himself and Lady Impey) have certainly visited more than once. Curiosity originally led us to accept the visit from the Armenian ladies, and complaisance to return it, nor did we think ourselves degraded by it; he being of the first family of the nation in India." Impey also said that Chambers had visited the Armenians. When it suited his purpose, Impey was fond of likening himself in position to the Puisne Judges, but in fact he ranked a good deal higher, his position being next to that of the Governor-General. His pay also was greater by £2,000 a year. The rank of the Chief Justice was fixed by s. 7 of the Charter, which gave him precedence "over all our subjects whomsoever" in Bengal, Behar, and Orissa, excepting the Governor-General. The Puisne Judges came after the Members of Council.

house, at Impey's on the same day, and again on the 20th before all the Judges. If Hastings was so doubtful about the case, and if the Judges were not so satisfied as to require bail, and had even intimated that there was no case against one of the accused (Francis Fowke), were Clavering and his friends so very far wrong in going to see Nanda Kumar for a few minutes?* Nothing passed between them but *salaams* and the common ceremonies (1210).

On the 24th, Hastings and Vansittart bound themselves over to prosecute. Sir James Stephen says (I, 89) that Barwell also bound himself over to prosecute, and he corrects the majority for stating the contrary (I, 102 note). He might have given them credit for being likely to know on 16th May what took place on 24th April. Fowke, in his letter of 25th April, says that Barwell waived his demand for bail, but lest Sir J. Stephen should not think this authority good enough, I beg to refer him to Barwell's own deposition (1204), where he says that it was not his intention to have prosecuted Mr. Fowke, and adds, "I neither asked bail, nor was bound over to prosecute." He goes on to say that he directed his counsel to prosecute, but this may have been after the Council's minute, for he was deposing in July; at all events it is certain that he was not bound over. A careful reading of the reporter's note (1093) would have shown Sir J. Stephen that Barwell was not bound over.†

It is not my intention to analyse the evidence in the conspiracy cases. I have already pointed out that the extortion of the *arzi* was not established, and that the verdict of the jury in Barwell's case in no way affects the previous verdict about the *arzi*. I have also pointed out that Nanda Kumar was convicted on the charge about the *fard*, though there was not

* The animus against Nanda Kumar is shown by the stress laid on the visit to him. Fowke was the principal accused in the case, and yet nobody reflects on the majority for continuing to associate with him after the 20th April.

† The papers of recognizances, preserved in the High Court, do not contain one from Barwell. They contain one from Vansittart.

a particle of evidence of his having had anything to do with it. One curious incident of the trial is deserving of notice as showing the kind of witness that the prosecution brought forward. One Mahomed Ghaus Newaz was called to prove what took place at Fowke's house on the morning of the 19th, and to attest a *surathal* (statement of facts) which Kamál drew up in the course of the afternoon. He first denied that he had signed any paper, and then said he had. Then he said that he had only heard Kamáldin's name, though it came out afterwards that he lived in Kamáldin's house. Finally, he denied that Khuda Newaz was his brother, or that he knew him.* The facts, however, that he was the brother of Khuda Newaz, and also that the two lived together in Kamál's house, were proved by Khuda Newaz and Husein Ali. We do not hear of this witness being prosecuted for perjury, but when Kista Jiban, Mir Asad, and Yar Mahomed were thought to have prevaricated in the forgery case, they were at once committed. Mr. Impey tells us (*Memoirs*, 139), that Halhed mentions in the preface to his *Hindu Laws*, that he once heard a man, not an idiot, swear upon a trial, that he was no kind of relation to his own brother, who was then in Court, and who had supported him from his infancy. It is evident that Mr. Impey was in happy ignorance that this witness was one called by his friend Mr. Hastings in his prosecution of Nauda Kumar.

There is a point about the conspiracy cases with regard to which I have found no explanation by Sir J. Stephen, or the other defenders of Hastings. This is, why were the conspiracy cases not tried before the forgery case? Hastings and Vansittart were bound over to prosecute on 24th April, and two days afterwards Fowke writes (1097) that he is to

* The report does not say in so many words that Mahomed Ghaus denied his own brother, but he did prevaricate very much, and the questions put to Khuda Newaz and Husein Ali show that he disowned his brother, and made out that he lived in his own house. The account in Halhed is at p. 51 of his preface, edition of 1776. Halhed calls the deposition an instance of *wgadhi*, or folly.

hold up his hand at the next sessions of oyer and terminer and gaol delivery. Why then were he and Nanda Kumar and Radha Charan not put on their trial in the beginning of June ? * Nanda Kumar was not committed for forgery till 6th May, and Mohan Prasad was not bound over till next day, which was a Sunday !† Sir J. Stephen's case is, that Mohan Prasad's charge was a private prosecution with which Hastings had nothing to do. What title then had it to take precedence of a charge brought by the Governor-General ? Why were the indictments in the conspiracy cases not drawn up till 19th June, while the forgery one was drawn up on the 7th idem ? Surely this gives support to the allegations of the majority of the Council in their minute of 16th May, that "this attempt (the conspiracy charge) to discredit the evidence of the Raja not answering the purpose it was intended for, he was, a few days after, again taken up on a charge of forgery, and committed to the common gaol." Sir J. Stephen says that the imputation here made is wholly unsupported by evidence, and is, he believes, false. But it is not false that Hastings' attempt to convict the Raja of conspiracy failed. And I think that Hastings and his advisers

* Hastings was, according to his account, apprehensive lest Kamál should be gained over before the assizes, and also lest Fowke should be able to patch up his contradictions. In his letter of 29th April, he says (Gleig, I, 525), "he has a long time now before him to patch up all these contradictions, for I understand the assizes will not be held before the 15th June." If Hastings had nothing to do with the forgery prosecution, why did he not get his counsel to protest against Mohan Prasad's case being tried before his ? The conspiracy cases were not tried till July, though the forgery case ended on Friday, the 16th, and Radha Charan's objection was not made till 20th June.

† The recognizance is in the High Court Record-room. It is dated 7th May, and is for £10,000. It only refers to a charge of feloniously uttering. Lemaistre had not then drawn out the elaborate charge we now have, nor was it thought apparently that the charge of forgery could be established. On the same day Kamáladdin, Gharib Das Pathak, Kista Jiban, and Ram Nath gave recognizances. Sabut and Nabakrishna do not seem to have been examined then. Gharib Das was the man who afterwards broke down, and Ram Nath was examined for the defence.

must have foreseen that it would fail, for surely no one can read the petition,* which Fowke was said to have extorted from Kamáladdin, without admitting that it does not contain any charge against Hastings. It does not allege that Hastings compelled Kamál to write a petition injurious to Mr. Fowke. Still less does it allege that Hastings did so, knowing the charge to be false. It represents Hastings as relying on what he had been told by Graham, and the constraint which Kamál laboured under in dictating it, was an unwillingness to expose Mr. Graham.

The indictment says that the conspiracy was to accuse Hastings of divers, enormous, and scandalous 'offences, particularly that he had by divers, sinister, and unlawful means procured a false accusation against Mr. Fowke, and that Hastings had presented this false accusation to the Council, knowing it to be false. But in fact no such charges can be extracted from the petition, that is the great *arzi*.

This, in my opinion, is strong evidence that the petition was genuine, and was not extorted; but if it was, it was a matter for Kamál alone to complain about, and did not affect Hastings. Graham might have been affected by it, but he had left India.

It is true that in Barwell's case a conviction was afterwards obtained, but I do not suppose that anyone will support the verdict in it against Nanda Kumar. There was absolutely no evidence against him about the *fard*; and, even if there had been, it is clear that a case in which the principal accused was fined only fifty rupis, would not have led to a sentence against Nanda Kumar which would have been of any use.

Of course if the prosecution for forgery was really brought by Hastings, its taking precedence of the shadowy charge of conspiracy is explicable enough. The forgery case enabled Hastings to have Nanda Kumar deprived of his liberty, for

it was non - bailable, and it struck at Nanda Kumar's life. The conspiracy cases were mainly directed against Fowke. Even Kamál did not accuse Nanda Kumar much about them, for he said that the Raja tried to induce Fowke to give back the papers (1152).

In addition to other errors in his account of the conspiracy charge, Sir J. Stephen has committed the very serious one of misstating Kamál's representation to Hastings on the morning of the 19th April.

He says (I, 79) that "Kamál came and complained that Nanda Kumar and Fowke had compelled him by threats to sign a petition or *arzi*, saying that he had paid Hastings bribes to the amount of fifteen thousand rupis in three years, and 45,000 to Barwell, and that they compelled him also to acknowledge the correctness of a *fard*, or account of sums collusively taken by himself on account of the district of Hijli." If Kamál had made such a complaint as this, then his charge might be said to be a material traverse of Nanda Kumar's accusations, and to be an appropriate and legitimate weapon of defence against them. But, in fact, Kamál did not make such a complaint as Sir J. Stephen has described. The note with which the account of the conspiracy case begins in the report says, that Kamál came to Mr. Hastings with a complaint against *Mr. Joseph Fowke*, for having extorted from him by violence, accusations against Mr. Hastings and other persons, and the deposition of Kamál which follows shows that it was Mr. Fowke he accused of extorting the *fard* from him. He did not allege that Nanda Kumar was present then, or that he took any part in extorting the *fard* from him. An examination of his deposition will show that it was only the *arzi* which he said Nanda Kumar got him to write. The *arzi* contains nothing about a bribe of Rs. 15,000, and Sir James has confounded in his account two different papers, the *arzi* and the *fard*. The deposition given by Hastings agrees with the reporter's note just quoted, and shows that Kamál's complaint was mainly against Fowke. After Hastings had described the complaint made by Kamál in December, he was asked if Kamál ever made any other

complaint to him. He answered : "He complained to me in April last. He came to me one morning in great agony, and the collar of his *jama* was torn ; he complained that Mr. Fowke had compelled him to sign an *arzi*, misrepresenting the contents of the former." Hastings was twice examined, once in his own prosecution, and again in that of Barwell. In one he did not even mention Nanda Kumar's name, and in the other, though Nanda Kumar's name came up in cross-examination, he said nothing about Kamál's complaining against him, either about the *fard* or the *arzi*. It is perfectly clear, I think, that the conspiracy cases were mainly directed against Fowke. Nanda Kumar is stated, according to the report, to have been found guilty in Barwell's case, but I suspect a misprint here. In the first place it is impossible to see how he could have been convicted about the *fard* : secondly, Hyde's notes do not seem to mention that he was found guilty or sentenced : thirdly, Nanda Kunar was in prison when the conspiracy case was decided, and there is no record in Yeandle's affidavit, or elsewhere, that he was brought out to be present at the conspiracy trial ; surely the Judges would not try him in his absence : fourthly, and which is perhaps the strongest reason, Impey said in his speech before the House of Commons that the reason for trying felonies before misdemeanours was that if the accused were found guilty of the former, it would be unnecessary to put him to answer for the lesser offence.

Impey was more cautious than Hastings or Sir J. Stephen, and would not allow that the conspiracy case had anything to do with Nanda Kumar's charges. In his defence before the House of Commins, he said : "To prove that the prosecution was not carried on for the purpose of justice, but to protect Mr. Hastings from the consequence of charges against him, it is alleged that a prosecution for a conspiracy was commenced against Nanda Kumar to defeat his accusation ; and that 'before any indictment found for the conspiracy, he was indicted for the forgery.' No proof whatever was attempted to be given, nor was it ever surmised at the

trial that the prosecution for the conspiracy was commenced for that purpose. Two indictments for conspiracies were found against him and others at the same sessions in which the indictment for forgery was preferred. Whether those for the conspiracies, or that for the forgery, had the precedence, I never knew, nor can I conceive it to be material. No order was made as to the priority of the trials; the indictments came on for trial in the usual order. Felonies are in general tried before misdemeanours; but it is the universal practice at every sessions which I have attended, either in England or Bengal, where an indictment for felony, and another for a misdemeanour, is found against the same person, to try him for felony first, because, if found guilty of that, it would be unnecessary to put him to answer for the lesser offence. The Court would not have tried the indictments for the conspiracies, except for the purpose of convicting the other defendants who were joined in the same indictments."*

To this I may add that, as far as I know, there is no contemporaneous allusion to Nanda Kumar's having been found guilty of conspiracy.

The original proceedings have not yet been found in the High Court, but for the above reasons I am strongly of opinion, that when found, it will be seen that Nanda Kumar was not convicted of conspiracy. If he was, it was contrary to the principle and practice referred to by Impey above, and can only have been done because there was still some lingering doubt if the statute was applicable, or if the sentence of hanging should be carried out.

* Impey's remarks show two things.—*first*, that Impey denied that it was thought at the time that the prosecution for conspiracy had to do with Nanda Kumar's accusations; *second*, that he affected ignorance as to which indictment was first found, though the trial, printed under his own auspices, shows that the indictment for forgery was drawn out on 7th June, and that for the conspiracy against Hastings on the 19th idem.

The following copy of the verdicts, as printed in Cadell's edition, will show how easily error may have crept in :—

“Upon Mr. Hastings' prosecution—Not guilty.

Upon Mr Barwell's prosecution—

Joseph Fowke,
Nanda Kumar, } Guilty.

Radha Charan—Not guilty”

It, therefore, all depends on whether the bracket has been rightly placed.



CHAPTER X.

THE TRIAL FOR FORGERY.

NANDA KUMAR was committed to jail on the forgery charge on Saturday, the 6th May, at 10 P.M. According to Price, Hastings did not hear of this till next morning, and then said that he was sorry that bail had been refused, and that it would be laid to him. Price specifies "next morning," in order to show that Hastings had nothing to do with the matter, but it at least shows that he got early information. He seems to have been then living at Alipore, and as he was in the habit of retiring to rest early, he could hardly hear of the commitment earlier than the Sunday morning.

I have already observed that the proceedings of 6th May were not published by the Judges. I have pointed out how suspicious this is, but I think that we have sufficient materials to prove that Mohan Prasad did not start the prosecution. He was a witness on the 6th, but I doubt if he was voluntarily more, and I am glad to be able to relieve him in some measure of the infamy of instituting the proceedings.

The first piece of evidence which I have to offer on this head is a letter written to the Court of Directors by Lemaistre and Hyde on 2nd August 1775. There they say, "no doubt of his (Nanda Kumar's) guilt remaining in the breast of either of us upon the evidence on the part of the Crown, a commitment in the usual form was made out." So also in the warrant of 6th May, Mohan Prasad is referred to as a witness, and not as a prosecutor. The words are "receive into your custody the body of Maharaja Nanda Kumar, herewith sent you, charged before us upon the oaths of Mohan Prasad,

Kamálddin Khan, and others with feloniously uttering," &c.* Price, too, tells us that it was the Company's lawyer who set the prosecution afloat. He says: "At this time a set of hungry wolves, of dastardly, selfish lawyers, had been let loose on the settlement, and they prowled about into every corner in quest of prey." Then he adds: "I am not quite certain how the truth came to light, but I have heard that a black writer, who had acted in the Mayor's Court, under the Register, Magee, gave a hint to the Company's lawyer in what part of the Register's Office the papers were to be found, and he flew with them to the sick nephew, Ganga Vishnu." The nephew, he says, was hurried on against his will to admit of the prosecution—"The papers were produced, the fact sworn to before one of the Judges, as acting Justice of the Peace for that day, and the Raja committed to the county gaol." Further on he says: "The Company's lawyer had certainly a view to the obtaining a good sum of money from the Raja, on the idea that he should be able to quash the evidence, and it is not unlikely but he might have effected it had he only had Hindus to deal with, who are averse to the spilling of blood,† and in particular that of a brahman; but he had snatched the prey out of competitors' hands, who were as greedy and knowing as himself, and who, spirited up by the majority, joined against him in support of the Raja, and undertook his defence." Price also says that the Company's lawyer used to boast that he would save the Raja's life if his counsel would consent to his paying the debt, and give him a handsome sum. The Company's lawyer here referred to can only be Mr. Hercules Durham, who afterwards conducted the prosecution. I would not rely much on Price's unsupported assertions, but we have evidence in the report of the trial that Durham had to do with the starting of the prosecution. He gave evidence

* It will be observed that there was at this time no charge of forgery.

† Compare this with Naba Krishna's evidence and Bam Nath's statement, that Mohan Prasad said he could not desist on account of the English gentlemen.

and stated (1094) that he had the bonds (Exhibit A and the two tips) in his possession three days before the commitment of the Raja. His deposition (1039) also shows that he took part in getting up the evidence, and in particular that he endeavoured to find out who had written the bond. He did this, he said, three days after the commitment. Durham was not only the Company's lawyer, to which post he was appointed in January or in February; he was also the head of one of the Kachahris, for Manahar Mitra speaks of him as his master, and Durham speaks of sending for the Kachahri (books?). That he was to some extent an intimate of Hastings, appears from the latter's classing him along with Vansittart and Elliot. Writing to Graham and Maclean on 29th April, he sends them copies of the examinations in the conspiracy case, and adds, "for Fowke's defence I have the joint recollection of George Vansittart, Durham, and Elliot added to my own."* This refers to Fowke's imprudent question to Barwell. His defence, as the report states, was not minuted. Sir J. Stephen asks (I, 183) why was Driver, the solicitor, not cross-examined as to the origin of the prosecution? The answer may now, I think, be given that it was not Driver who was the solicitor for the prosecution, it was Durham. Mohan Prasad's power-of-attorney, as I have already pointed out, was not drawn till 6th May, and apparently after the commitment. I should have thought too that if either Durham or Driver had been questioned on such a matter, they could have pleaded privilege. If the prosecution had been really a private one, Driver would, in all probability, have conducted the proceedings before the Judges on the 6th, for he had been solicitor in the civil suit. Of course I do not mean to deny

* Durham was one of the persons who made affidavits (Elliot being the other), that it was a common belief in Calcutta that Clavering and others were resolved to rescue Nanda Kumar by force. Both Hastings and Impey admitted that there was no ground whatever for the allegation, and Hastings wanted not to take Clavering and the others' affidavits on the subject, for the reason that nobody could believe that the majority had any intention of rescuing Nanda Kumar.

that Mohan Prasad was nominally the prosecutor, but I think that he was only made so at the last moment.* It was only on the 6th May, and after the commitment, that he got his power-of-attorney from Ganga Vishnu.

When once he had bound himself by executing a recognizance to prosecute, he was inextricably involved and obliged to go on to the bitter end.

This may explain his persistence even when he knew that the punishment would be death.

It is characteristic of the indecorous haste of the proceedings that Mohan Prasad's recognizance to prosecute was taken on the 7th May, which was a Sunday, and *sq a dies non*.

On that day Lemaistre bound him down in the enormous sum of £10,000 in these words, "that if you shall to personally be and appear on the first day of the next sessions of oyer and terminer... and then and there prefer to the grand jury a bill of indictment against Maharaja Nanda Kumar for feloniously uttering as true a false and counterfeit writing obligatory to defraud the executors of Bolaqi Das deceased and *shall prosecute the same with effect* and shall attend from day to day, and not depart without order of the Court, then this recognisance to be void, or else to remain in full force and virtue."

This paper, which is in the High Court Record-room, is interesting as showing that the charge of forgery was not then thought of, and that Mohan Prasad did not know that he was prosecuting Nanda Kumar for forgery. This may have made a great difference in his ideas. As one of the signatories to the petition for pardon for Radha Charan, he must have known that the punishment for forgery was hanging, but he may not have known that the punishment for publishing or using

* It would almost appear from Impey's speech that it was Kista Jiban who started the prosecution, for he speaks of his *information* and of his being the voluntary accuser of the Raja. Price too talks of the warm revenge of the book-keeper (Kista Jiban). If this was so, it was surely unfair to treat Kista Jiban as partial to the Raja, and to punish the Raja for his breaking down.

a forged deed was so. If any proclamation was made after Radha Charan's pardon, which I do not believe, it could only have reference to the forgery. It may be noted too, that, in Radha Charan's indictment, Statute 2 Gep. II, c. 25, was not expressly referred to.

On the Monday after the commitment, Nanda Kumar addressed the following remarkable letter to the Council :—

"After having been honoured with the confidence of the Nawab Jafar Ali Khan, so specially the friend of the English, after having discharged the first office in the Subah, after being now ten years retired from all public employment, and having seen my son appointed to a distinguished post with this testimony, as I have been credibly informed, of the Governor's approbation of his father, that he instituted my son in the post with a view to his profiting from my experience and wisdom, I might startle the Honourable Board with an address from the common jail, had I not in a degree prepared them for some fatal change in my situation by a representation which I made in the month of March 1775, of the severe menaces that had been uttered against me by the Governor-General. When the first magistrate declares his determined intention of hurting an individual to the utmost of his power, the enemies of the man so marked for destruction will eagerly grasp at an opportunity for gratifying their malice, the dissolute and abandoned will find a sufficient inducement to prosecute him from the hopes of gratifying the resentment of the men in power, and if the unhappy man so devoted has by his upright conduct made the wicked his enemies, malice and wickedness may unite their endeavours to complete his ruin. To advance a step further, should the first man to the State countenance in public men known to be destitute of all moral principle, and, as publicly known, to be the enemies of the person against whom he has denounced his resentment, should he treat a man of such principles with a degree of distinction far above his rank in life, should he admit him to private conferences with him, what is the wretched object of his resentment to expect, where shall he find an asylum when the whole body of the wicked and abandoned is let loose upon him ! I mean not, however, to deprecate the Governor-General's resentment. The reason of the encouragement offered to my enemies, and the motives of the Governor-

General's resentment against me, will be sufficiently explained to the world by the representations I have already made in a former address to the Honourable Board.

"Should my life be taken away by the flagitious charge now laid against me, the facts before alluded to will remain upon record, the witnesses will be ready, and the proofs producable whenever the Governor-General has courage sufficient to hear them.

"A charge which has now been three years depending in a civil court without the witnesses upon whose evidence I have been committed having been once produced, or mentioned, has been laid against me by men who are marked by the public as the most turbulent and abandoned.

"My only intention in setting forth the services I have done and the character I have to an advanced age supported, is to introduce my request that I may not suffer, upon such a charge from the bare accusation, a punishment equal to that of death.

"The Honourable President, I am well assured, is fully sensible of the fact I allude to; it may be requisite to explain to the rest of the honourable Members of the Board that the institutions of our religion strictly enjoin a number of ablutions, prayers, and other ceremonies to be performed by the sect of Brahmans before they can take any kind of food. Nothing of this can be performed in the place where I am now; and could even these obstacles be surmounted, the place itself, as being inhabited by men of a different religion, would prevent my receiving any sustenance without breaking through rules which I have hitherto religiously observed; I therefore humbly request that I may be permitted to reside under as strict a guard as may be judged requisite in some place where this objection may be obviated."

Nanda Kumar said nothing in this letter about his physical discomforts in jail, and probably they were not very great, for special arrangements were made for him. That, however, the Calcutta jail was a dreadful place may be seen from the evidence of Francis, Creassy, Hicky, and Shakespeare. Impey put both Naylor and Swainston into this jail. Naylor was in bad health, and died a few months after his release,* and

* North Naylor was the Company's attorney, and was put into jail for not answering interrogatories. This was in the beginning of March 1780,

Francis deposed that he believed his death was hastened, if not occasioned, by his confinement. The same witness said of Swainston : " He was as strong and healthy a young man as any in the Company's service ; he paid the witness a visit the day he came out of prison, but he was so much altered and reduced by his confinement that he did not at first recall who he was."

Upon receipt of Nanda Kumar's letter, Monson moved that the Sheriff and his deputy be requested to produce the warrant of commitment. On this Hastings said, "I object to the motion, as I shall do to every interference of this Board with the authority of the Judges of the Supreme Court." Francis and Clavering agreed to the motion, and so it was carried. The object of sending for the warrant was to see if it directed the Sheriff to imprison Nanda Kumar in the common jail. In fact it did not, but Tolfrey put him there, and this was approved of by the Judges. Though the commitment had only been made by the Judges in their capacity of Justices of the Peace,* they became furious at the Sheriff's being sent for; and on 25th May, Lemaistre and Hyde wrote that, "if on the minutes being made public they should be found to contain any insinuation or reflection which might cast an imputation upon them, they would hold every individual Member of the Board who joined in such defamation as personally liable to them to the utmost extent of the laws of England." I submit that such language as this justified the apprehensions of Monson and Francis, when Clavering proposed to produce the letter of Nanda Kumar, which was afterwards burnt. It was probably with reference to it that

and on the 5th idem his wife died. He was not let out till about the 16th. Swainston was, as well as Naylor, punished for his conduct in the Kasijora case. The sentence was, that he be imprisoned for three weeks, fined Rs. 200 and costs, and give security on Rs. 20,000 for his good behaviour for two years ! He was Assistant at Midnapur.

* It may be worth pointing out that in this respect the Members of Council were on a par with Lemaistre and Hyde, for by s. 38 of the Regulating Act they had power to act as Justices of the Peace.

Francis said that the Judges could have fined Clavering to the utmost extent of his goods (I quote the expression from memory). It is noteworthy that Hastings was present when Nanda Kumar's letter of 8th May was read, and that he did not repudiate its accusations.* Ten days later he wrote to his agents, Graham and Macleane, that the old gentleman, Nanda Kumar, was in jail, and in a fair way to be hanged. Sir J. Stephen admits that this shows that Hastings was pleased at the prospect of Nanda Kumar's being put to death, but he thinks that it is against the theory that he was then engaged in a conspiracy to murder him. He says that in that case Hastings would hardly have chuckled over the matter to his agents and that he should have expected him to avoid the topic (I, 75 note). Now, in the first place, Graham and Macleane were something more than Hastings' agents. He calls them in this letter his dear friends, and says he remains their "sincerely affectionate and faithful servant." In the second place, he might write to them what he chose, for they were then on the high seas and would not get his letter for months, and long after the case had come to an end one way or other. It is important also to notice that in this very letter and in the chief part of it, *viz.*, the postscript, he retracted his intention of quitting the country, and said he would wait the issue of his appeal. His reason for doing so is also remarkable; it is because he does not believe that men whose actions are so frantic will be permitted to remain in charge of so important a trust. The frantic actions are described in the earlier

* Sir J. Stephen's account of the Council's proceedings on Nanda Kumar's petition and of Impey's conduct is not correct. He says that the Council examined the Sheriff as to the merits of the case, which they did not, and he implies that Impey at once sent his own physician to attend Nanda Kumar. Impey did not do this till the 9th. On the 8th, he told the Sheriff that Nanda Kumar was not committed by him, and that he had no power to interfere in the affair, there being felony expressly charged in the warrant. On the 9th, he wrote to the Board about the opinions of the Pandits, but showed no inclination to mitigate the rigour of the imprisonment, and asked the Board to tell the Maharaja that if he wished to petition again, he should do so immediately to the Judges.

part of the letter and have all to do with Nanda Kumar. They are, the visit to him when he was about to be prosecuted for conspiracy, the elevation of his son to the first office in the Nizamat, and the dismissal of Mani Begam. But the essential point in the reference to Nanda Kumar is, in my opinion, the indication that Hastings was cognizant of the evidence against Nanda Kumar, or at least that he had reason to believe that Impey would hang him. Unless he was so cognizant, he could hardly conclude, from the fact of his being committed, that he was in a fair way of being hanged. We know from Nanda Kumar that he had had private interviews with Mohan Prasad, and this and the fact that Impey was his sworn ally might justify his writing in this confident way. Sir J. Stephen asks how could Hastings or his friends tell that Nanda Kumar might not have documents clearly proving that the transaction was a genuine one, etc. But here we have Hastings believing that Nanda Kumar was likely to be hanged before a single witness had been examined for the defence. As to rushing prematurely into such a prosecution, no one ever said that he was the ostensible prosecutor. Granting that it failed, Hastings could always say that he had had nothing to do with the matter. He could repudiate his agents, Kanta Babu, Kamáladdin, Mohan Prasad, and the rest of them just as he, on other occasions, repudiated Maclean and Scott.*

The June Assizes began on the 3rd, but we have no record of what took place before the 8th, when Nanda Kumar was put up to plead. The whole of that day seems to have been taken up with deciding preliminary objections raised by Farrer, and it is characteristic of the report that it dismisses this most important part of the proceedings with a very few words. All we are told is, that "the prisoner being called to

* Major Scott and other friends drew up an elaborate written defence for Hastings, and he adopted it and filed it in the House. But when the prosecution proceeded to make use of the admissions contained in it, Hastings disowned the document and got Major Scott to say that he (Hastings) barely looked at it, &c.

the bar and arraigned, and the indictment read, his counsel tendered a plea to the jurisdiction of the Court; but the Chief Justice pointing out an objection thereto, which went both to the matter of fact and the law contained therein, and desiring the counsel to consider if he could amend it, and take time for so doing, he, after having considered the objection, thought proper to withdraw the plea; whereupon the prisoner pleaded not guilty."

This does not seem a fair account of what occurred. Farrer was examined before Touchet's Committee in 1781, as well as in 1788, in the proceedings for Impey's impeachment, and presumably his memory was better on the first occasion. He was asked then if he took advantage of questions concerning the inapplicability of a penal English statute to the case of Nanda Kumar, and he replied, no doubt he did. He first prepared and put in a plea* to the jurisdiction of the Court; that being overruled, he afterwards contended that though the Judges might, in strictness, deem themselves competent to try him, yet that the English statute that made the offence upon which he was tried, capital, could never be meant to extend to persons in his circumstances.

Being asked if that argument was admitted in favour of his client, he said that the circumstances which were publicly known to have followed spoke the contrary, as he was condemned and executed.

Unfortunately, I have not been able, while writing this essay, to see the evidence which Farrer gave in 1788. I have therefore to depend on Sir J. Stephen's abstract, and this is not satisfactory, as I observe that he adopts Farrer's evidence when it helps Impey, and rejects it when it is against him. He accepts it, for example, when Farrer says that evidence was given about Calcutta's being a seat of great commerce, though there is not a word of this in the report; but he rejects it when Farrer says that he withdrew his plea on being threatened with judgment against him, if it

* Why is this written plea not published in the report?

failed. Sir J. Stephen says that he cannot pretend to say what Lemaistre meant by shaking his head, and ignores the fact that this was not all that occurred. Lemaistre not only shook his head, but said, "No, no," when Farrer urged that the accused in capital cases had a right to plead over. Farrer also said that the Court intimated further that they had no discretionary power to allow him to plead over. Sir J. Stephen admits that such a judgment would have been monstrous, and have justified almost anything that was said of the Court. But why does he refuse to believe that the Court did this monstrous thing? Is it likely that Farrer would otherwise have withdrawn a plea which, apart from the merits, was, as he told the Committee, the principal thing upon which he depended? Sir J. Stephen says: "It would have been better to allow the plea to the jurisdiction, and to permit the prisoner to plead over to the felony; but I draw no special inference from the course taken by the Court, as it did not prevent a motion for arrest of judgment on the same ground" (I, 221). This might lead the reader to suppose that the point was taken in the motion for arrest of judgment. But this is not the case, the only points then taken being paltry quibbles about dots, etc. Why did Farrer not take the plea in his motion for arrest of judgment? Clearly, I think, because it had been ruled against him, and evidence had been gone into on the understanding that it was abandoned. This being so, Farrer could not, without a breach of faith, or at least with any prospect of success, reopen the question. Farrer's plea on the 8th June did not, according to Sir J. Stephen's abstract of it, take the point of the statute's not being applicable to Calcutta. The point was taken by Chambers, but he was overruled by the other Judges. Sir J. Stephen's account of the matter implies that Chambers and Farrer, too, were convinced by evidence which was given about Calcutta's being a commercial city, and Farrer is quoted as saying that he was beat even in his own opinion on that ground. There seems, however, to be an anachronism here. The evidence to which Farrer referred was evidence

given during the trial (Stephen, I, 224), whereas the discussion with Chambers took place before the trial began. Farrer speaks distinctly of witnesses examined during the trial and of statements by one or two of the jury. He names witnesses Hazari Mal, Kashi Nath, Naba Krishna, and Khwaja Petrus. All these persons were examined during the trial, but, so far as the report goes, they said nothing about the commerce of Calcutta. Sir J. Stephen is therefore in this dilemma, that either Farrer's recollection was mistaken, or the published report is grossly inaccurate. It is also noteworthy that Impey did not take this defence in the House of Commons. He said nothing about witnesses deposing to the commerce of Calcutta. I am therefore of opinion that Farrer was mistaken, as was not unlikely to be the case, when he was giving evidence after so many years.

Impey said in reply to Chambers that he had always conceived India, and particularly Calcutta, to be greatly commercial, and Sir J. Stephen follows him, and says that he does not see why the Statute 2 Geo. II was less applicable to Calcutta than to London. I suppose, then, that Sir J. Stephen is prepared to assert that Calcutta in 1770 was more commercial than any town in Scotland or America, to neither of which countries had the Statute, so far as I am aware, been extended.* It must be remembered that it is not the state of things in 1775 that we have to consider. The bond purported to have been executed in 1765, and it certainly was not executed later than January 1770. 1770 was the year of the famine, in which about one-third of the inhabitants of Bengal died of hunger. This does not say much for India's commerce. In the following year the Court of Directors wrote: "On comparing the once flourishing state of the commerce of Bengal with the gradual decline it has undergone for several years past, it gives us the greatest concern that so unhappy a change should

* Scotland was expressly excluded from the operation of the Statute. The words used to denote the punishment for forgery were surely enough to show that the Act was intended only for England. They were: "shall suffer death as a felon without benefit of clergy."

have occurred under our Government." (Letter of 10th April 1771, quoted in Bolts, III, App. A, 250.) In 1770 Calcutta was, at most, only the second town in Bengal. Murshidabad was the capital, and was known by the name of "the city." The Courts were there, and it was there that the *punya* was held. It was not till 1772-73 that a change was made by bringing the Courts down to Calcutta. Hastings wrote in October 1772, that by these arrangements the whole power and government of the province would centre in Calcutta, and that it might now be considered as the capital of Bengal. He exults in thinking (Gleig, I, 285) that the changes will one day make Calcutta the first city of Asia, and many years afterwards he applied to himself the boast of Augustus, "*Urbem lateritiam recepi, marmoream reliqui.*" This might be true, for in India everything follows the Government, and towns sometimes spring up more rapidly than they do in Australia or America; and it was unjust to overlook this fact and to judge Nanda Kumar according to the state of Calcutta in 1775, and not according to its state in 1765 or 1770.

Sir Elijah Impey himself gave testimony against the populousness or prosperity of Calcutta in 1770, and unconsciously demolished the defence which Sir J. Stephen now makes for him. The way he justified himself was, that English law was in force in Calcutta, and that if the natives did not like it, they should not have come or stayed there. His words are: "If they disliked the laws, they had only to cross a ditch and were no longer subject to them It was not till since the seat of Government and the collection of the revenues have been brought to Calcutta, that it has become populous, by the influx of black inhabitants. The laws have not been obtruded on them, they have come to the laws of England." This is what he said at his impeachment, and he made no reference to Hazari Mal or Kashi Nath. Impey represented Chambers as having acquiesced in his view about the applicability of the Statute, but Mr. Belchambers' note (p. 1) shows that Chambers adhered to his former opinion eleven years afterwards. In 1786, when a native was charged

under 2 Geo. II, c. 25, s. 2, Chambers was of opinion that the Statute did not extend to Bengal. Hyde thought it did, and Sir William Jones doubted, but agreed that the case should proceed. Here again we find Chambers overruled, but not waiving his opinion. Two years later, in Martin Shabin's case, Chambers seems to have brought Jones round to his opinion.

Sir J. Stephen describes Sir William Jones as only doubting if 2 Geo. II, c. 25, extended to India, and he seems to think that the earliest authority for the doctrine about the introduction of the English statute law in 1726 is Sir Edward East's Paper of 1825.

The following extract, however, from Sir William Jones' charge to the Grand Jury on 4th December 1788 shows that that Judge became convinced that the Statute did not extend to India, and that he grounded this partly on the Charter of 1726 :—

He says : "The Armenian whom I mentioned under the head of perjury being also charged with having forged the bond, to the due execution of which he positively swore after strong and repeated warnings by an interpreter of his own nation, the great question again* arises whether the modern Statute, which makes forgery capital, extends or not to those Indian territories. On the fullest consideration, I think the negative is supported by stronger reasons than the affirmative : the Statute in question seems to have been made on the spur of the times. Its principal object was to support the paper-credit of England, which had just before been affected by forgeries of banknotes, and it contains expressions which seem to indicate a local operation. The punishments which it enforces are beyond the laws of nations, and the British laws appear to have been introduced into India by a Charter preceding the Statute, so far at least as to bring this country within the ~~general rule~~."

" Nevertheless, I still think the question debatable. I see it, as I lately told the senior Judge (Chambers) who agrees

* Alluding to the case of 1786.

..

with me, rather with the light of the rising than with that of the meridian sun ; and the learned argument of the Judge (Hyde) who differs from us, has rendered the point still doubtful. It makes me wish for a decision of it by the highest authority at the fountainhead of justice. Yet the reasons arrayed on the opposite side so far turned the scale as to justify me in recommending an indictment on the Statute of Elizabeth, especially as a conviction on the modern Statute would not at present be followed by execution." (Jones' Works, III pp. 32-33.)

The Armenian here referred to must be Martirus Shabin,* who, according to Mr. Belchambers' note, was convicted on 11th January 1789, under the Statute of Elizabeth, of publishing a forged document. Sir James Stephen says, "of the reasons for the judgment given no record remains," but here we have them in Sir William Jones' charge ! I do not see how it shows anything against Chambers. It was Jones who changed his opinion.

Sir J. Stephen has said much about the Charters of 1726 and 1753, and has argued that the Statute of 1729 might have been introduced into Calcutta by virtue of the 2nd Charter. Impey, too, referred to the Charters, but it does not appear that they were the ground on which he and his brother Judges held in 1775 that Nanda Kumar was subject to the jurisdiction of the Supreme Court and punishable under the Statute. What they held was, that he was a British subject in consequence of his being an inhabitant of Calcutta, which belonged to the Crown by conquest. Impey said in the House of Commons, "the town was part of the dominion of the Crown by unequivocal right, originally by cession founded on compact, afterwards by capture and conquest." So also Hyde, J., said in

* This case is mentioned in Seton-Karr's Selections from the *Calcutta Gazette*, p. 278. The accused is there called Muthruas Shawun. The offence was committed against Mrs. Dustagul, the widow of Mr. Petfuse (Khwaja Petruse the witness?) Apparently it was tried in December 1788. The case in 1786 did not, perhaps, necessarily raise the question of the applicability of 2 Geo. II, c. 25, for the charge was not capital even under it.

1782, "We say the inhabitants of this town are all British subjects, because this town was conquered by Admiral Watson and Colonel Clive, but that does not extend to subordinate factories." Chambers, J., concurred.

Russell, C. J., in his judgment in the case of the Goods of Bibi Mutra, in 1832, speaks of the original four Judges of the Court, holding that all Hindu and Mahomedan inhabitants of Calcutta are British subjects, and remarks that the reasons upon which this view is rejected by Mr. Justice Ryan are such as would induce any lawyer to pause at least before coming to the conclusion that such a ground of jurisdiction is sustainable (Clarke's Notes, quoted by Montcriou, p. 160).

This being the view that the Judges took, I ask why did not Impey accede to Nanda Kumar's request to be tried by his peers, or why, at least, did he not direct that there should be Hindu and Mahomedan inhabitants of Calcutta on the jury?

It may be worth noting that if the Charter of the Supreme Court gave jurisdiction, then the fact of his being an inhabitant of Calcutta was perhaps not important. The Charter gave the Court the same jurisdiction in the subordinate factories as in Calcutta, and this phrase would have included Patna, Dacca, and, I suppose, Murshidabad also.

One of the points urged at the impeachment of Impey was that Nanda Kumar was not a voluntary inhabitant of Calcutta when the forgery was committed, but was there as a prisoner. Sir J. Stephen says that the assertion was altogether unfounded, and yet his own documents corroborate it, for the so-called "Life of Nanda Kumar" mentions that Nanda Kumar was sent under a guard to Calcutta after the accession of Najm-ad-Daula. This was in February or March 1765, and the author of the Sair tells us that when Lord Clive came out ~~later~~ in the year, he refused to reinstate Nanda Kumar in the diwanship, and ordered him not to go out of Calcutta. If, then, the forgery be taken to have been committed on the day mentioned in the bond, 20th August 1765, I think that it is tolerably clear that Nanda Kumar

was not a voluntary inhabitant of Calcutta at the date of his offence.*

It deserves to be noted that, according to Farrer and the report of the trial, it was the Chief Justice who immediately gave a decided opinion both as to the matter of fact and of law contained in the plea. This does not look like the act of a prudent and wary Judge, for unquestionably the point was

* In the indictment in the forgery and conspiracy cases, Nanda Kumar is described as late an inhabitant of the town of Calcutta. Does this mean that he was not so formerly? Nanda Kumar was often under arrest. Mr. Long publishes a petition of his, dated March 1763, in which he complains that he has been in confinement for several months. He was released during the war with Mir Qasim and accompanied Mir Jafar to the army; but when Mir Jafar died, he again got into trouble. The author of the *Sair* says that Vansittart had a very bad opinion of Nanda Kumar, and wrote all his delinquencies in a book, and told his brother George, known as Hushiar Jung, to read it to Clive upon his arrival. The younger Vansittart did so, and the effect was that though Clive had been disposed to favour Nanda Kumar, he now turned against him, and would not make him Diwan. It is possible that Naba Krishna had some hand in this disgrace of Nanda Kumar, for we are told, that in 1767 Nanda Kumar revenged himself by getting up a charge of rape against Naba Krishna. The case failed, and Nanda Kumar was threatened with being made over to the country Government—a fact which shows that the Council did not consider him subject to the Calcutta Courts. (Bolts, III, App A, 155.)

I may here notice that Lord Macaulay and Sir J. Stephen seem to be wrong in ascribing the enmity of Gholam Husein towards Nanda Kumar to the fact that the latter had helped to bring down Mahomed Reza Khan. The author of the *Sair* was no admirer of Mahomed Reza, and says many things against him. His dislike of Nanda Kumar was more probably due to his dislike of his master, Mir Jafar. Gholam Husein had attached himself to the party of Mir Qasim, and he complains bitterly of Mir Jafar's treatment of Mir Qasim's friends. It is likely, too, that Gholam Husein was prejudiced against Nanda Kumar by his friend, George Vansittart. Gholam Husein was also attached to Hastings' party. His great friend and patron was Ali Ibrahim Khan, whom Hastings made Magistrate of Benares. Jonathan Scott, in his history of Bengal, speaks of Gholam Husein as a learned and respectable man, once of greater consequence, but now, if living, a member of the native court of judicature, under the most worthy Nawab Ali Ibrahim Khan, the establishment of which by Mr. Hastings rendered justice and police to a great capital (Benares) in which they had been long neglected. The so-called "Life of Nanda Kumar" was certainly written by a native, and I should not be surprised if Gholam Husein had something to do with it.

arguable, and not to be lightly disposed of. The point that the misdemeanour merged in the felony, and that, therefore the Act of Elizabeth was not applicable, does not seem to have been taken at the time by Impey. Sir J. Stephen holds that it was the correct view, but Chambers and Jones, JJ., seem to have been of a different opinion, and I was under the impression that no English Statute became obsolete by lapse of time or implication, but was always in force until expressly repealed.

A good deal has been said by the defenders of Impey, and among them, by Sir J. Stephen, of the case of Radha Charan Mitra, and it is therefore necessary to examine it a little. Radha Charan Mitra was convicted of forgery at the Calcutta Court of Quarter Sessions, and sentenced to death. The forgery consisted in the fabrication of a codicil to the will of an Armenian named Khwaja Solomon. He was also charged with feloniously *presenting* the codicil, but the conviction was only for forgery. It is important to notice that it seems only an inference that Radha Charan was tried under 2 Geo. II, c. 25. The indictment, as given in Impey's Memoirs, p. 415, does not mention the Statute, or even contain the words "against the force of the Statute," and, as the Directors pointed out (see App. H), the language of the Statute was not employed. How then could the trial be a promulgation of 2 Geo. II, c. 25? In the following month, the natives of Calcutta, etc., petitioned Mr. Spencer, the Governor, against the sentence, and the result was, that Radha Charan was respite and eventually pardoned. The trial had taken place before three of the Company's servants—Playdell, Burdett, and Gray—who were, of course, not lawyers, and whose decision Impey would have paid very little respect to, if it had not happened to support him.*

* The Supreme Court ought to have dispensed better justice than the Mayor's Court or the Court of Quarter Sessions. The last probably cost very little, for the Judges were all Company's servants; the annual cost of the Mayor's Court was Rs. 16,000, and that of the Supreme Court, Rs. 4,43,000. See Touchet's Committee's report. There were at first four Judges; the number was afterwards reduced to three, but this was not from motives of economy, but in order to provide a pension-fund for the other three.

The petition of the inhabitants is given in Verelst, and also in Mr. Long's Selections ; the first words of the second paragraph are—" Your petitioners, therefore, beg leave to set forth the general consternation, astonishment, and even panic with which the natives of all parts, under the domination of the English, are seized at the example of Radha Charan Mitra: they find themselves subject to the pains and penalties of laws to which they are utter strangers, and are liable through ignorance unwillingly to incur them, as they are in no ways interested in those laws; they cannot tell when they transgress them, many things being, it seems, capital by the English laws which are only fineable by the laws of your petitioner's forefathers, to which they have hitherto been bred, lived, and been governed, and that till very lately, under the English flag." It seems also from the same petition that the jury recommended the prisoner to mercy.

It is important to notice that Radha Charan's offence was committed against an Armenian.* This was of itself enough to distinguish it from Nanda Kumar's case. For the purposes of jurisdiction, Armenians were looked upon as Europeans. They had no law of their own, and they have always been treated as subject to English law. For instance, in 1881, the Calcutta High Court found that the widow of an Armenian, married before the passing of the Dower Act (XXIX of 1839), was entitled to dower out of lands in Calcutta, under the English common law (I. L. R., VI Cal., 794).

This decision followed the earlier case of *Emin v. Emin*, and we find too from Morton's Decisions, p. 16, that Sir Robert Chambers in 1788 regarded Armenians as so completely British subjects that he granted letters of administration to the estate of an Armenian who had died in the Murshidabad District.

* It appears from a letter from Najm-ad-Daula to the President (Long's Selections, p. 410) that Khwaja Solomon was a native of Constantinople. Impey, in his defence before the House of Commons, said that in Radha Charan's case an Armenian had been prosecutor.

Sir Robert observed: "It seems reasonable to give so much latitude of construction to the words "British subject dying within the provinces" as to include a class of Christians who are strangers and foreigners here, and who consider themselves, whether they live in the town of Calcutta or not, as residing under the protection of the British Government, and not of the Subhadar. A further argument in favour of this procedure may be drawn from a deed-poll under the Company's seal executed at London A.D. 1688, by which Armenians are permitted to live in any of the Company's towns, and to sell and purchase houses and lands and to be capable of all civil offices as if they were Englishmen born."

The deed-poll here referred to will be found in Bolts, III, App. A, 2.

Armenians were not regarded by the Indian Government as natives of India, and it was on this account that, in May 1768, the Calcutta Council decided that Armenians could not be allowed to trade in the interior. They wrote (Bolts, III, App. E, 404), that only natives of the country should in future enjoy the privilege, and that Armenians, Portuguese, and their descendants were excluded. Verelst's book was published in 1772, and it is scarcely conceivable that Impey could not have seen it. At least Hastings must have been well acquainted with it, for Verelst was one of his predecessors, having been Governor from 1766 to 1769. One of his chapters is entitled "The impossibility of introducing English laws into Bengal," and he gives this case of Radha Charan as an instance of the absurdity of applying English laws. He says (p. 141), "the amazing extent of public and private credit in Great Britain has induced our legislators to punish forgery with death. Under this law a native of Bengal was condemned in the year 1765. But so extravagant did the sentence appear, where experience had never suggested the principle; such the disproportion in their eyes between the punishment and crime that the principal inhabitants of Calcutta expressed their astonishment and alarm in a petition to the Governor and Council; and upon a proper

representation, Radha Charan Mitra received a pardon."* Verelst prints the petition in his appendix (p. 177), and it may also be read in Mr. Long's Selections (p. 430), where it appears with copies of the ninety-five signatures. Impey had the effrontery to say that the natives did not complain of the law, but only of their ignorance of it. He also remarked that the whole passed in the ordinary course of business, and accorded with all the other proceedings of the Court. This last observation seems to be one of those crafty subterfuges of which Impey was so fond. It is not false, but it suggests a false conclusion. As Khwaja Solomon was an Armenian, it may be that the trial of Radha Charan was in the ordinary course of business, and accorded with the other proceedings of the Court of Quarter Sessions. But this does not show that the Court claimed jurisdiction where both prosecutor and accused were natives. The contrary is shown by a subsequent case, for in March 1767, that is, two years after Radha Charan's case, the Justices were, upon deliberation, unanimously of opinion, that a criminal charge between natives only did not belong to the jurisdiction of the Sessions. (Verelst, p. 26.) Acting on this view, they declined to hear the complaint of Gokal Sonar, who had charged Naba Krishna with abducting and violating his sister, and referred the complainant to the Court of the Zamindar.

During the debates on Impey's impeachment, Colonel, Fullarton quoted a firman of 1764, in which the Company were enjoined to decide causes "agreeably to the rules of Mahomet and the laws of our empire." (Parliamentary History, 27, p. 471.) Sir J. Stephen says that the firman is not to be found in Aitchison's Treaties, and he appears to doubt its existence. It would have been strange if Mr. Aitchison had omitted it, for the firman is an important one, and was published both by

* I am indebted to the Home Office, Calcutta, for an extract from the Court of Directors' dispatch. The language is a little stronger than as quoted by Impey and Sir J. Stephen, for the Directors say "we are very glad you have interfered in his behalf."

Bolts and Verelst. It is, however, in Aitchison (Vol. II, p. 6), being omitted from the first volume as it does not relate to Bengal. It is dated 29th December 1764; and is the deed whereby the Company obtained Ghazipur and the rest of the zamindari of Raja Balwant Singh.

As regards the question of the applicability of 2 Geo. II, c. 25, it is now settled law that the Judges were mistaken in thinking that the Act was in force in Calcutta. It was passed in 1729, and it has been long admitted that no English Statute passed after 1726—the year in which the Charter for the Mayor's Court was granted—is in force in India unless specially extended thereto. (See Mr. Whitley Stokes' preface to his collection of Statutes relating to India.) No doubt this is a mistake into which the Judges might fall in good faith, but it is a curious Nemesis that when these English lawyers thought they were applying *summum jus*, they were technically, as well as substantially, wrong. Sir J. Stephen endeavours to controvert the view taken by the Indian Courts, but I do not suppose that his authority will be considered superior to that of Sir W. Jones, Sir E. East, and many others. One curious remark he makes is, that if no Statute passed after 1726 be *ipso facto* in force in India, then all indictments should have been in Latin, for the Statute requiring them to be in English was not passed till 1730. And he says, that the effect of this would have been that the doors of the Court would have been practically closed on the criminal side. Now, in the first place, the terms of the Charter were, I think, wide enough to allow the substitution of English, and, in the second place, supposing that the provision of the common law did apply, how did it close the doors of the Courts? What did it matter to Mohan Prasad or Nanda Kumar, or to the natives generally of those days, whether the indictments were in English or in Latin? Both languages were equally unintelligible to them.

There were two Charters granted, first that of 1726, and again that of 1753, by which the former Charter was recalled. Sir J. Stephen argues that the Charter of 1753 may have

let in the Statute of 2 Geo. II, which was passed in 1729. But it would seem that this view never was adopted by the Supreme Court, though Impey said in his defence before the House of Commons that, as the old Charter was surrendered by that of 26 Geo. II (1753), "it was a legal consequence, that all the criminal laws in force in England at that period thereby became the laws of the town of Calcutta."

It seems to have been considered that there could be no fresh introduction of English law after the Mayor's Court had once been established. Mr. Stokes observes* that the laws of England were introduced at a much earlier period, *viz.*, by the Letters Patent of Charles II in 1661, but this could not be a real introduction, for at that time the Company had no territory.

I am unable to say why none of the authorities, except Sir J. Stephen, has taken any notice of the contention that the Statute of 1729 may have been brought in by the Charter of 1753; but as none of them, neither Sir E. East, nor Mr. Longueville Clarke, nor Mr. Whitley Stokes, refers to it, I presume that it must be untenable. Two remarks, however, may be made. One is, that the Charter of 1753 was more limited than that of 1726, for it expressly exempted suits between natives from the jurisdiction of the Mayor's Court, unless by consent of parties. Another remark is, that Impey's reference to the Charter of 1753 was probably an after-thought. His original idea, as well as that of his three colleagues, seems to have been that English law was brought into Calcutta in 1757 on the ground that it was then conquered by the English.

This was the view enunciated by Hyde, J., in 1782 in the case of the Goods of Bengaley Gawney (?) (Morton's Decisions, 195.) At least he and Chambers held that all the inhabitants of Calcutta became from that date British subjects. This view was departed from by the Judges in 1832 in Bibi

* The observation was made long before by Mr. Morley, *vide* Introduction to his Digest, p. ix.

Mutra's case (Morton, 191), and has long since been exploded. As Mr. Morton remarks in a note, Admiral Watson and Clive's taking of Calcutta was "a recapture, not a conquest, both the territory and the sovereignty were British, by purchase of the former, and voluntary grant of the latter, before then."

The fullest exposition of the matter is to be found in a paper appended to Sir Edward Hyde East's evidence before the House of Lords. He gave his evidence in 1830, but the paper had been drawn up long before, and apparently in 1816. He began as follows :—

"It is proper to remind Government that notwithstanding the Act of the 13th Geo. III, c. 63, and the King's Charter of 1774 granted under it, communicating all civil, criminal, admiralty, and ecclesiastical jurisdiction to the Supreme Court thereby constituted, and virtually and essentially extending the common and statute law of England to the inhabitants of Calcutta, and to the British inhabitants of the whole Presidency, yet that these inhabitants have not the full benefit of the statute law of England to a later period than the 13th year of George 1st, unless expressly named. This has been the uniform construction of the Judges of the Supreme Court since its institution, and whether right or wrong, the Judges of the present day cannot depart from it without authority of Parliament.

"The period at which the general statute law stops in regard to this Presidency is that of the constitution of the Mayor's Court in Calcutta, when those who established that construction said, upon the doctrine of Calvin's case, that the British law was then first given to Calcutta, as to a British colony ; and that, as such, it could not be included in any subsequent Statute unless expressly named.

"Thus by a mere technical rule of doubtful application and extent with respect at least to the fluctuating body of British residents in the Presidency, not only they, but the whole native population of Calcutta have been cut off from the common benefit of the British Legislature, unless specially named (which has not always been remembered), without

having any other effectual local legislature substituted in the place of it.

"It is difficult to imagine that this could have been designed or intended."

Sir Edward goes on to show the inconvenience of the present state of things, and instances the case of a felon who stood mute under circumstances which made it very doubtful if it was not from obstinacy. "If so found, he must have been put to the barbarous torture of *peine forte et dure*, instead of having judgment against him by the Statute of 12 Geo. III, c. 20, but this is now better provided for by the Court ordering a plea of not guilty to be entered for him." This is the very kind of case referred to by Sir J. Stephen as a sort of *reductio ad absurdum* of the application of Calvin's case. Sir E. East tells us how the Court has got over the difficulty, but this was not Lemaistre's solution, and presumably he meant to threaten Farrer with the *peine forte et dure* for his client when he peremptorily called upon him to plead.

It would seem from Sir E. East's saying that the construction mentioned by him had been made by the Judges from the institution of the Court, and from a passage further on in the paper, that he was under the impression that Nanda Kumar was convicted under some earlier Statute than 2 Geo. II, c. 25.

He suggests that the Judges should have a discretion to apply Statutes, and, in answer to objections, observes that they have this power with regard to Statutes passed before 13 Geo. I, and that he never heard any suggestion that the power had been abused except on the application made of the capital offence of forgery in a single instance to the case of Nanda Kumar, and then the principal stress was laid on its being *ex post facto*.*

The report tells us nothing about the grand jury, but Captain Price says that it was composed of twenty-three jury-

* I suppose that the expression *ex post facto* refers to the Court's not being established till 1774.

men chosen out of forty-eight gentlemen of unblemished character. One of these gentlemen of unblemished character was Price himself, and his gentlemanliness and character may be judged of by his writings and by his ship-contracts. (Francis' Memoirs, II, 133, 134.)* According to him, the grand jury unanimously found a true bill.

The indictment consisted of twenty counts, and in each of them the bond was recited, so that the paper was of great length. The reason why the indictment had so many counts was because the drawer could not make up his mind as to whether the document was a bond, a writing obligatory, or a promissory note, or whether Bojaqi Das was alive or dead in January 1770. The indictment contained the averment that the offence was committed after 29th June 1729, so as to bring it under the Statute of Geo. II, which came into force after that day. Sir J. Stephen is angry with me for saying that the indictment was drawn by Lemaistre, but his quotation from Tolfrey's evidence shows, that when the latter was questioned on the assumption that he had acknowledged having seen a copy in Lemaistre's handwriting, he did not object or say that the question was unfair. Tolfrey was a lawyer, and not a timid or ignorant witness, and would surely have objected to the question, if he thought it unfair.

Sir J. Stephen's remark that the report to which Tolfrey referred might have been a report in London in 1788, is, I humbly think, a very preposterous one. Tolfrey saw the paper in Calcutta in 1775, and his words imply that he had previously heard of the report.

Of course, Lemaistre may have copied out the indictment without his having himself drawn it, though it is hardly conceivable that any man who was not the author of the indictment and not compelled to copy it would take the

* Price had a controversy in the London *Courant* about the Bengal Marine, or the Mosquito fleet as it was commonly called. He took great credit to himself for having equipped the *Resolution* and the *Royal Charlotte*, but he did not deny "Nautilus's" assertion that the equipment of the Bengal Marine cost the Company Rs. 28,32,956.

trouble to write out so many pages of legal verbosity. I should have thought that there was nothing very extraordinary in his drawing the indictment, for he was the committing Magistrate and the prosecution was being conducted by a Government official, Mr. Durham.* It is evident that Lemaistre took a great deal of interest in the case, for, according to Sir J. Stephen, he made himself much more prominent than Impey in cross-examining the witnesses for the defence. Sir J. Stephen accounts for this by saying that Lemaistre was the committing Magistrate, though I should have thought that this would have made him keep in the background, especially as he had already decided that Nanda Kumar was guilty. However, the point of who drew the indictment is, after all, not one of great importance.

When the indictment had been read and Nanda Kumar's plea to the jurisdiction overruled, he was asked by whom he would be tried, and answered, "By God and his peers." The Court asked, who the Maharaja considered as his peers? and his counsel said, he must leave that to the Court. Impey then said that he could only be tried by British subjects. It does not appear from the report that Nanda Kumar or his counsel claimed that he should be tried by a jury of his countrymen, though probably this was implied by his demand that the jury should be of equal rank with himself, for this required that they should be brahmans. But it is curious that no discussion seems to have taken place as to the meaning of the phrase "British subjects,"† for it is by no means

* Sir J. S. thinks that the clerk could have drawn up the charge, but apparently he was not well skilled in his duties, for Impey wrote that the witnesses for the defence could not be prosecuted to conviction partly on account of want of skill in drawing up the indictments. If I am wrong about Tolfrey's evidence, I am so in good company, for both G. Elliot and Pitt (who voted in favour of Impey) gave the same account of his evidence as I have done.

† Section 34 of the Regulating Act directed that all offences should be tried in the Supreme Court by a jury of British subjects resident in the town of Calcutta, and not otherwise. This, I presume, controls the slightly different expression "subjects of Great Britain" used in the Charter.

free from ambiguity, as Mayne, in his Commentaries on the Indian Penal Code, has shown.

Sir J. Stephen, when seeking to vindicate the Supreme Court from the charge of usurping jurisdiction over the natives of India, points out the ambiguity of the phrase. He says, "In one sense the whole population of Bengal, Bihar, and Orissa were British subjects. In another sense, no one was a British subject who was not an Englishman born. In a third sense, inhabitants of Calcutta might be regarded as British subjects, although the general population of Bengal was not." In another place he points out that the words of the Charter, "subjects of Great Britain," might exclude Irishmen.. It is difficult to believe that if the Regulating Act or the Charter intended that the Supreme Court should have jurisdiction over all the inhabitants of Calcutta, it was not also intended that natives should be tried by their own countrymen. When Sir J. Stephen asks me if there are no fair trials in British India now-a-days (I, 185 note), he knows perfectly well that no such trial as that of Nanda Kumar can now take place. Natives are tried by mixed juries, or by Judges who know the language, who are assisted by native assessors, and whose decisions are appealable. Impey defended himself for hanging Nanda Kumar by referring to the practice of the Calcutta Court of Quarter Sessions, as instanced in the case of Radha Charan Mitra. It is a pity that he did not think of another practice of that Court, which was, to try natives by juries composed half of natives and half of Europeans. Bolts tells us (II, 167) that this was introduced by Vansittart.

Though Nanda Kumar was, perhaps, not regarded as an alien,* yet surely the principle of the *de medietate linguae*-statute, if there was one in force then, was applicable, and he should have been allowed some jurymen who were of his own country. At his trial, the Judges, the majority of

* He was born at Bhadrapur, in Murshidabad (now included in Birbhum), long before the battle of Plassey and the grant of the diwani. He therefore was an alien by birth, and it does not appear that he was ever naturalized.

the jury, and his counsel were foreigners, unacquainted with the language of the witnesses, and he himself was ignorant of the language of the Court. The very interpreter was a youth, who was not a native, or even the authorized interpreter of the Court.* We are told that he was a great linguist, but he had passed no examinations as far as we know, and it does not appear that he had any knowledge either of Bengali or of Nagari ; he knew some Persian and Hindustani, but the report which he edited, shows that he was not a scholar.†

Is a trial so conducted, and in which two of the presiding Judges had already made up their minds, entitled to be called a fair trial ?

All four Judges were present, but Lemaistre and Hyde had prejudged the case, for on the 6th May no doubt of Nanda Kumar's guilt remained in their breasts. The violence of Lemaistre's deportment was notorious. His name was Stephen Cæsar Lemaistre, and all he did was in Cambyses' vein.‡ When Nanda Kumar was dying for want of food, he, alone of the Judges, objected to mitigate the rigour of his imprisonment,§ and he was specially prominent in declaring that if Nanda Kumar's plea to the jurisdiction were overruled, a verdict of guilty would follow. As Mr. Farrer deposed, "the Court cut me short, and the prisoner was.

* It appears from his brother's speech that he was only 17 when he went out to India, and that this was after Hastings had arrived in Bengal. He therefore could not have been more than 20 at the time of Nanda Kumar's trial ! Chambers, the official interpreter, was related to Sir Robert (Bengal Obituary, p. 71), so possibly Hastings and Impey were glad of his absence.

† See Richardson's Persian Dictionary, p. 77, about Elliot's ignorance of the origin of the words *tamasuk* and *khat*.

‡ Lemaistre was perhaps the one of the four Judges who most resembled Jeffreys in violence and rudeness. He was perhaps like him too in his pleasures, for we find from Francis' Memoirs that he was a gambler, and Impey refers to his "midnight social hours."

§ Yeandle's affidavit. In 1778, Lemaistre caused a panic by letting loose upon Calcutta 60 to 70 convicts. See evidence of Mr. Mill, the Superintendent of Police, and the Report on Touchet's petition.

called upon peremptorily to plead, Mr. Justice Lemaistre, to the best of my recollection, adding, under the pain of being considered as standing mute."

Even Sir J. Stephen admits that Lemaistre was narrow-minded, arrogant, and violent, and that little is to be said in favour of Hyde. They afterwards quarrelled with Impey, and then he wrote to Thurlow: "I have every day more reason to be concerned at my having assisted in getting Hyde and Lemaistre appointed Judges. Hyde, in whom the seeds of the disorder which he had a little before he left England still remain, and Lemaistre are violent beyond all measure." I take this quotation from Sir John Kaye's article. He mentions that Impey elsewhere states that his possession of the casting vote was a thorn in the side of his colleagues. In another letter, quoted by Sir J. Stephen, Impey writes that "Hyde is absolutely under the management of Lemaistre, who, I fear, thinks he shall please Lord Sandwich, whom he thinks his patron, by opposing the Company." We may gather from the above that Hyde had once been out of his mind, and that for a time both he and Lemaistre would be disposed to be subservient to Impey, as he had helped in procuring them their appointments. Chambers was for trying Nanda Kumar under the Statute of Queen Elizabeth, and if Impey had joined with him, his casting vote would have overruled the two other Judges, and Nanda Kumar's life would have been saved.

The jury who tried Nanda Kumar were obscure men,* and the only two of whom anything is known are Robinson, the

* Probably the obscurity of the jury was partly owing to the leading inhabitants getting excused on the ground of their being officials whose attendance would be inconvenient to Government. According to Impey (1058), several got off on this ground, who afterwards admitted that they had little or no excuse to offer, but thought that when they saw others excused, they might put in their claim. Another reason for the petit jurymen being men of low rank was, that persons of superior station were absorbed in the grand jury. When grand juries were abolished, one of the reasons given (I think by Sir Henry Maine) was, that the measure set free for petit juries the excellent material looked up in the grand jury lists. The number of educated Englishmen in Calcutta in 1775 must have been very small.

foreman, and Weston. The juryman, Samuel Touchet, was probably not the Touchet who petitioned against the Supreme Court, for the latter is called John Touchet in the Report of the Committee.* Robinson's character and abilities may be estimated from his correspondence with Farrer; and I think it does not say much for the other jurymen that they elected such a man their foreman. Probably he owed the distinction to his having been Mayor of Calcutta in 1771. (Bolts, III, Appendix 1, 631.)† According to Price, Robinson was a private friend of Hastings, and became bankrupt a few years after the trial. Weston was the son of the Recorder of the Mayor's Court, and was born in Calcutta in 1731. He was originally a servant of Mr. Holwell, and was a Eurasian, as appears from a statement by the Rev. Mr. Long, and also from a notice in the Bengal Obituary, which

* Touchet, in 1776, was Bakshi, or paymaster, to the Hospital. John Touchet was, I think, an assistant of the Committee of Revenue. Francis seems to be referring to John Touchet when he speaks of a Touchet as agent to Ducarel. (II, 215.)

Price calls Samuel Touchet a young gentleman (another juvenile dispenser of justice!), and says that he was a rum-merchant, and used to supply Bengal with 500 leaguers (casks) of wine at a time when French brandy could not be had. He also says that he was a silk manufacturer and was several times on the brink of bankruptcy.

† Price's reference to Robinson occurs at page 75 of one of his "Letters of a Free Merchant," and is quoted by Sir J. Kaye in his article on Sir Philip Francis. Robinson was part owner of the *Ashburnham* for the job, about which see Debrett's "Authentic Copy of Correspondence," Vol. I. The majority, in their minute of 15th September 1775, state that Robinson, like Playdell, was dismissed the Company's service. In the same passage Price speaks of Belli, who sent the correspondence between Robinson and Farrer to Impey, as another bankrupt friend of Hastings. Price seems to have been present throughout the trial, and, according to him, it was Robinson who questioned Yar Mahomed, and led to his being told to begin his evidence over again. We are told (1030) that the foreman of the grand jury, who had been one of the Aldermen and filled the office of Mayor, desired that the records of the Mayor's Court might be produced. Possibly the word *grand* here is a mistake, for Robinson had been the Mayor, and surely the grand jury would not interfere after the prisoner had been made over to the petit jury. It would seem, however, from the address of the grand jury to Sir Elijah, that they remained in attendance throughout the

speaks of him as an instance that "chaste and refined sentiments are not confined to complexion or climate." Some others of the jurors were probably also half-castes; at all events some were country-born, for Impey says so in his charge. The jury was therefore hardly entitled to be called an English or a British jury. It was rather what used to be called a Cossitollah jury.* This reminds us of the famous statement of Sir Ashley Eden, when giving evidence before the Indigo Commission. When asked how he would himself like to be tried, he replied that, if innocent, he would sooner be tried in the local Sessions Court, with an appeal to the Nizamat, and if guilty, by the Supreme Court and a Calcutta jury. This was in 1860, but it would seem that the spirits of Lemaistre and Hyde were still hovering about the Supreme Court, for Sir Mordaunt Wells wanted to have Mr. Eden called to account for the above remark.+

Nanda Kumar was defended by Messrs. Farrer and Brix, and Mr. Impey, with his usual recklessness, calls them two English barristers of eminent ability and repute. In this he has been followed by Kaye, though he more cautiously terms them two of the most eminent English lawyers in the settlement.* In fact, Brix was neither an Englishman nor a barrister. He was a Dane, who had been secretary to Mr. Cazenove, the Governor of Serampore, and was (according to Bolts, for informing against him) made an attorney

* The rage for innovation has changed this name, literally the butchers' quarter, into Bentinck Street; just as a still worse meddlesomeness has altered the time-honoured and appropriate name of Tank Square (Lâldighi) into Dalhousie Square!

+ Nanda Kumar challenged eighteen jurymen. I can only identify two of these—Richard Johnson, whose brother is said to have arranged Mrs. Imhoff's divorce, and Bernard Messinck, the Sir Barnaby Grizzle of *Hicky's Gazette*. Probably the brother to whom François refers (*Memoirs*, II, 109), was Mr. James Johnson, who was the *vakil* of the Nawab of Arcot and who went to Bengal in October 1774 to interview the new Council. He went home with Macleane in the beginning of 1775 and arrived in England in July; *vide* the Defence of Lord Pigot, p. 299, and President Wynch's Minute in Appendix, p. 107, to the 9th Report. Richard Johnson got a bullock-contract, and afterwards held an appointment at Lucknow.

of the Mayor's Court (Bolts, II, 78). Whether Farrer was a barrister or not I do not know, but the probabilities are that he was not so in 1775. Impey described him in his letter to the Earl of Rochford as having come out to India under the name of secretary to Colonel Monson, and as having been admitted an advocate at the desire of Monson.* This would imply that he did not come out a barrister, and agrees with Sir J. Stephen's statement that he has not been able to find any record of Farrer's having been called to the bar. Perhaps, if a search were made for one or two years after Farrer's return from India, his name might be found, as Price intimates that he passed as a lawyer after his return. Price, in his coarse way, says that Farrer came out so very needy, as to find it necessary to accept eighty rupees for his particular care of a few hounds.† The point

* Smoult's collection of orders shows that Farrer was admitted an advocate of the Supreme Court on 22nd October 1774. Clause XI of the Charter authorized the Judges "to admit and enrol as many advocates and attorneys-at-law as shall seem meet . . . who shall be attorneys of record . . . and the said advocates and attorneys on reasonable cause to remove." It would seem then that Farrer was quite at the mercy of the Judges as regarded his professional prospects. It was not until 1st June 1799 that the Judges ordered that advocates should have been called to the bar in England or Ireland, &c.

† It is not clear if this was a monthly allowance or a single payment.

I think that some argument against Farrer's being a barrister-at-law may be derived from the facts that he is not so described in the enrolment order of 22nd October 1774, and that when in April 1775 he joined with Lacam in being surety for Fowke, they are both designated in the same way as Esquires merely. I think that this last is an occasion on which the title of barrister would have been given, had he had a title to it. The omission on 22nd October 1774 is still more marked.

The entry was "the Court admitted Thomas Farrer, Esquire, an advocate of this Court, who thereupon took the oath of allegiance." He was the only person who was admitted an advocate that day.

Price twice refers to Farrer's honesty and to his acting as a whipper-in. The passage about his having passed afterwards as a lawyer as in the letter to Burke, p. 4, and is as follows :—"Ask a man close to your nose, who in October 1774 was leading hounds in couples about the town of Calcutta, but since passed through the law as the first qualification, and then through a corrupt borough (Wareham) into the senate-house."

is important, because it affects the question of Farrer's independence. If he was not a barrister, and was wholly dependent on the Chief Justice for his position, he would be chary of offending him, and we, in fact, see that he had not the courage to do his duty to his client. When Nanda Kumar complained to him about the treatment of his witnesses, he shuffled, and, to use his own words, avoided giving him a direct answer. Whatever his abilities and zeal for his client, he could do little for him, as he knew nothing of the language, and only communicated with Nanda Kumar through an interpreter.

After the jury was sworn, the following scene took place between the Chief Justice and him :—

"THE COUNSEL FOR THE PRISONER"
"objected to the interpretation of Mr. Elliot, as being connected with persons whom the prisoner considered as his enemies."

CHIEF JUSTICE.—"The principal interpreter of the Court is absent; the gentlemen of the jury have heard the interpretation of the assistant interpreters on other occasions. Do you, gentlemen, think we shall be able to go through this cause with the assistance of those interpreters only?" JURY.—"We are sure we shall not be able." CHIEF JUSTICE.—"It is a cruel insinuation against the character of Mr. Elliot. His youth, just rising into life, his family, his known abilities and honour should have protected him from it." Mr. Elliot desired he might decline interpreting. CHIEF JUSTICE.—"We must insist upon it that you interpret; you should be above giving way to the imputation; your skill in the languages and your candour will show how little ground there is for it."

MR. FARRER.—"I hope Mr. Elliot does not think the objection came from me; it was suggested to me." CHIEF JUSTICE.—"Who suggested it?" MR. FARRER.—"I am not authorised to name the person." CHIEF JUSTICE.—"It was improper to be made, especially as the person who suggested does not authorise you to avow it." JURY.—"We all desire that Mr. Elliot, whose character and abilities we all know, would be so kind

as to interpret." MR. FARRER.—"I desire on the part of the prisoner that Mr. Elliot would interpret."

I submit that we have here a clear indication that Nanda Kumar looked upon Hastings as his prosecutor, and I cannot understand how Sir James Stephen, after reading this passage, could write that from first to last Farrer neither suggested, either directly or by a single question in cross-examination, that the accusation against Nanda Kumar was a malicious prosecution got up to silence the accuser of Hastings (I, 182). Elliot's intimacy with Hastings was well-known, and it was for this very reason that he declined interpreting for General Clavering. He was equally intimate with Sir Elijah Impey, whose son tells us that Elliot had been living at their house in Calcutta as a member of the family, being treated by Sir Elijah as a son or a younger brother. He was equally dear, he adds, to Warren Hastings. When Elliot went home in August, taking with him the report of the trial, and no doubt with a commission to defend Hastings and the Judges, Hancock gave him a letter of introduction to his wife, and in it he says, "Pray, treat this gentleman with the greatest civility, he is the friend of our great friend."

The only possible reason Nanda Kumar could have had for objecting to Elliot's interpretation was his intimacy with Hastings, and perhaps with Impey.* I submit also that Impey's manner on this occasion was bad, and that he showed

* Impey said in his defence before the House of Commons that Elliot lived in that intimacy with him that he might almost say he made part of his family, and that no secret of his heart was unrevealed to him.

It is a significant fact that Elliot was also the interpreter on the 6th May, before Lemaistre and Hyde.

What business had he there except as the friend and dependant of Hastings? He was not the official interpreter. Price tells us that "the whole affair was so sudden, that not one of the majority or the minority knew anything of the matter until the Rajah was lodged in prison." But here we have Elliot on the spot from the very beginning.

It is from the High Court records that I learn that Elliot interpreted on the 6th. He, attests the depositions as being true translations, and the deposition of Gharib Das Pathak appears to be in his handwriting. It looks as if it had been written in a great hurry.

in no equivocal manner, how he would be likely to treat questions tending to connect Hastings with the prosecution. After his remark about cruel insinuations, we need not be surprised that Farrer did not offend again. In spite of the above extract from the report, Impey had the effrontery to state before the House of Commons, that Elliot served voluntarily as an interpreter. Poor Elliot could not well continue to decline when one so much older than himself, and in the position of his host, told him that he must insist on his interpreting, and that he should be above giving way to the imputation. With regard to Sir James Stephen's remark, that no questions were asked during the trial about Nanda Kumar's having accused Hastings of corruption, I have to point out, in addition to what I have just said, that an attempt seems to have been made to get in such questions in the course of the conspiracy trials, and that it was rejected by the Court. I refer to the cross-examination of Francis Fowke. He was asked if Nanda Kumar was employed by his father in investigating any sources of corruption in this country. He answered he did not know; and then we have the note, "The Judges here put a stop to any further questions of the above nature." The report does not say whether the defence or the prosecution was cross-examining this witness.

CHAPTER XI.

THE TRIAL CONTINUED.

The Witnesses for the Crown.

THE witnesses for the Crown, excluding mere formal witnesses, were eight in number,—viz., Kamáladdin and his servant Husein Ali, Khwaja Petrus,* Sadaraddin, Mohan Prasad, Naba Krishna, Sabut (?), Pathak, and Kista Jiban Das. The principal exhibits were the jewels-bond (Ex. A), Bolaqi's power-of-attorney, his will and the probate thereof, Nanda Kumar's receipt for the money (Ex. F), and papers in Silavat's handwriting (Ex. G).

The main document in the case was the jewels-bond.

This paper is so important that I give the following exact copy of it from the original edition of the trial:

"Translation of the Persian bond recited in the indictment—

It is witnessed.

"I who am Bolaukee Doss.

MAHAB ROY.†

"As a pearl necklace, a twisted kulghah,
a twisted serpache, and four rings, two of
which were of rubies and two of diamonds,
were deposited by Rogonaut Roy Geoo, on
account of Maharajah Nundocomar Bahadur,
in the month of Assar, in the Bengal

It is witnessed —
**SCILAU BUT, the
Vakeel of Seat
Bolakee Doss.**

* Called Aga Bedross by the natives.

† In Elliot's translation in the High Court the word is Mahtab. Apparently the name is Mahtáb, i. e., the moon. This is a Khatri name, and was that of one of the Rajahs of Bardwan.

year 1165, with me, in my house at Moorshedabad, that the same might be sold; at the time of the defeat of the army of the Nabob Meer Mahomed Cossim Cawn, the money and effects of the house, together with the aforesaid jewels, were plundered and carried away. In the year 1172, Bengal style, when I arrived in Calcutta, the aforesaid Maharajah demanded the beforementioned deposit of jewels; I could not produce the deposit when demanded, and on account of the bad state of my affairs, was unable to pay the value thereof; I therefore promise and give it in writing, that when I shall receive back the sum of two lacks of rupees, and a little above, which is in the Company's cash at Dacca, according to the method of reckoning of the Company, I have agreed and settled, that the sum of forty-eight thousand and twenty-one sicca rupees is the principal of the amount of the said deposit of jewels, which is justly due by me, and over and above that, a premium of four annas upon every rupee. Upon the payment of the aforesaid sum from the Company's cash, I will pay that sum, without excuse and evasion, to the aforesaid Maharajah. I have, for the above of a bond under my signature, that when it is necessary it may be carried into execution.

"Written on the seventh day of the month of Bhadoon, in the Bengal year 1172."

NOTE.—The above differs slightly from the copy given by Sir J. Stephen (I, pp. 112-13), and which is taken from Howell. There seem to be a word or two missed out in the last sentence of the bond as given in Cadell's edition.—The words (I have for the above) "reasons, given these reasons in the form" (of a bond) do not occur there. The correct words, however, are to be found in Elliot's translation in the High Court. There the last sentence runs: "I have for the above reasons given these words in the form of a bond under my signature that when it is necessary, it may be carried into execution."

It is witnessed.

ABDEHOO
COMMAUL
MAHOMED.

Alabd.

BOLAUKEE DOSS.

A *kalghah* (*kalghi*) is a turban-ornament, and so is a *sirpache* (*serpech* or *sirpesh*), the latter, as its etymology implies, being worn in front.

The English date of the deposit is June 1758, and of the bond, 20th August 1765. *Alabd* (*al-abd*, literally the slave) denotes that the document was sealed by Bollaki.

Scilaubat (*Silavat*) did not seal; he only signed his name and profession.

Sir J. Stephen says (I, 185 note) that the case "did not turn to say extent, on the comparison of signatures." But surely the comparison of Silavat's alleged signature with his admitted handwriting was an important point in the case. At least the mental comparison by Naba Krishna and Sabut of the alleged handwriting with their knowledge of his handwriting was considered to be of much weight.

Thus we see that the bond purported to bear the seal of Balaqi Das, and to be attested by three witnesses—*Mahtáb Rai*, *Silavat*, and *Kamál Mahomed*; this last is the witness spoken of by Sir J. Stephen as *Abdehoo Commául Mahomed*, but the first word is no part of the name, but the prefix, meaning *slave* (of God), which is often put by Mahomedans before their names (see Wilson, *Abd*; and Elliot's explanation, 984). The case for the defence was that all three witnesses were dead. The case for the prosecution was, that Silavat was dead, that there was no such person as *Mahtáb Rai*, and that *Kamál Mahomed* was in fact *Kamáladdin*. *Kamáladdin* was thus by far the most important witness in the case. Silavat had signed his name and profession, *Mahtáb* and *Kamál Mahomed* had put their seals, but, according to Chaitanya Nath, both had also written something above their seals. *Kamáladdin's* story was that his name used to be *Mahomed Kamál*, and that the impression on the bond was that of his seal, but that he had not affixed it. He also said that the words "it is witnessed," which were written above the seal, were not in his handwriting. He accounted for his seal's being on the bond by saying that *Nanda Kumar* had put it there without his knowledge or consent. He said that he had sent the seal to

Nanda Kumar in 1763, when the latter was at Monghyr with Mir Jafar, in order that it might be affixed to an *arzi* which Kamál wanted to be drawn up and presented to the Nawab. Kamál does not tell us where he was when he sent his seal, and the whole story is very strange. Why should he not have written the petition himself and sealed it, and then have sent it to Nanda Kumar to present?* Sir J. Stephen says that Kamál is corroborated by his khansamah, Husein Ali, but the khansamah referred to by Kamál is called Qasim Ali in the report, and granting that this is a misprint, there is a discrepancy about the number of gold-mohars sent, for Kamál says he sent two, and Husein Ali says three were sent. Another curious point was that Kamáladdin gave no satisfactory evidence of his name's having been formerly Mahomed Kamál. He said he had received a sanad when his name was changed, but he left it behind him in Hugli and did not produce it in Court. He produced a letter† which he said Nanda Kumar had written him, and in which he was addressed as Mahomed Kamál, but there is nothing in the report to show that this letter was proved to be Nanda Kumar's. Mr. Farrer at first, according to the report, admitted

* In fairness to Kamáladdin, I should state that Colonel Fullarton said in his speech, that it was not uncommon in India for a person to send his seal to a confidential friend to be affixed to a deed. I have no knowledge of the practice myself.

† The letter was dated 2nd Rabi-al-Akhir, 4th Jalus (10th October 1763). I do not know where Sir J. S. got authority for saying that Shah Alam succeeded in January 1760. (I, 114, note.) His father was murdered on 8th Rabi-as-Sani 1179 (29th November 1759), but apparently the reign was reckoned as beginning on 1st Jamada-al-Awal following (December 21st, 1759). Sir J. S. betrays singular ignorance for an ex-Member of Council by his remark that, as Shah Alam succeeded in January 1760, the fourth year of the reign would therefore begin in January 1763. He evidently does not know that the Mahomedan year is shorter than the Christian by 11 days. The fourth year of the Jalus began on Jamadi-al-awal 1176 (19th November 1762).

The letter (Ex. B) is still in the High Court. It is wonderfully fresh-looking and quite untouched by insects. I am surprised that the jury did not object to the recentness of the writing. It purports to have been despatched from Monghyr.

that Nanda Kumar had got a letter from Kamál, but he afterwards retracted this admission, and moreover, when he was examined before the House of Commons, he stated that the report was incorrect here, and that he never admitted the letter. According to Kamáladdin, he got the title of Khan, etc., when the King of Delhi and Colonel Coote were at Patna, and consequently in 1761. He ought, therefore, to have been known by the name of Kamáladdin Khan from 1761. Kamál got over this difficulty by saying that he could not assume the title till it was confirmed by the Nawab, and that this did not occur till the time of Najm-ad-Daula. But even in that case he must have taken the title before the date of the jewels-bond, for he says that the confirmation took place when Nanda Kumar was Naib Diwan, and ten or fifteen days before Mahomed Reza was appointed. It would appear, therefore, that by his own account his name was changed in February or March 1765, and that Nanda Kumar must have been aware of the fact. Is it likely that Nanda Kumar would use in August 1765 a seal which he knew had become obsolete? Of course the improbability is increased if we suppose that the deed was not forged till 1770.

The name Kamáladdin signifies perfection in religion, and is found on the seal which Kamál put to a petition of 20th April 1775. The Persian original is in the High Court Record-room, and the seal contains, in addition to the name Kamáladdin Ali Khan, the Persian figures for 1178. I am assured by a Mahomedan gentleman that this must be a date according to the Hijra era. Now 1178 H. S. corresponds to the period from 5th July 1764 to 23rd June 1765, and therefore Kamál must have begun styling himself Kamáladdin Ali Khan at least one and-a-half months before the date of the jewels-bond and nearly five years before it was published. He himself said that he began to use the title in the time of Najm-ad-Daula (the star of the State), when he was made Faujdar of Hugli, and that he changed his name some days before Mahomed Reza became Naib Subah.

Najm - ad - Daula succeeded his father in January 1765 (*Stewart's History of Bengal*, p. 535), and was soon compelled to make Mahomed Reza Khan his naib. Kamál must, therefore, have changed his name early in 1765.* This seems to me to make his evidence very doubtful, for it will hardly be disputed that if the jewels-bond was a forgery, it was one contrived long after August 1765. Nanda Kumar would hardly set about forging the deed until there was a good prospect of the debt due (Bolaqi's) being paid, and this did not occur till about the end of 1769. Is it likely that Nanda Kumar would in 1769 use a seal with the old name on it? He must have known that Kamál had been calling himself Kamáladdin Ali Khan for years, and he could hardly help knowing that he had changed his name in the early part of 1765, i.e., if Kamál's evidence is true.

It is important to notice that the petition of 20th April 1775 is the original of great part of what is given in the report as his deposition. It is a regular petition, beginning in the usual way with a *Gharib Purwar, Salamat* (Hail, Protector of the Poor).

This, of course, diminishes the value of the paper, for it is not the record of a *vivā voce* examination.

It is difficult to say where, or under what circumstances, it was drawn up, for D'Oyley, the Persian Secretary, and a great friend of Hastings, gave contradictory accounts of it to the Board. He first said that it was a petition to Hastings, and that Hastings gave it to him to translate, and then he retracted this statement, and said that Kamáladdin wrote it at Impey's house, and that it was addressed to Impey. He wrote on 24th April that he had made the first statement, because he was confused and intimidated by the angry reception which the majority of the Board gave him!

* The point of when he got the title is cleared up by his déposition of 6th May 1775, when he says, "the title of Khan was conferred on this deponent about ten days after the accession of Najm-ad-Daula." He must then have got it in January or February 1765. No explanation is given of his dropping the Mahomed and assuming the affix Dín.

At all events, it is clear that, on 19th April, Hastings not only sent Kamál to Impey with a private note, but he also directed D'Oyley to go there and take down the story of Kamál.

D'Oyley went next day also, absenting himself from his proper duties without leave. He, however, did nothing, for the report says that, being fearful of not possessing sufficient resolution in the presence of so many people, he desired that some other person might assist him in this office on the next day; and Mr. Elliot was accordingly desired to attend with him, which he did, and was, in effect, the only interpreter on the 20th.

The report then notices that Sir John D'Oyley was subjected to the severe displeasure of the Board "in terms which directly implied a censure for having obeyed the orders of the Governor-General."

Hastings sent home copies of the preliminary proceedings of the conspiracy trial to his agents in England, and I do not think it unreasonable to suppose that he, or his trusty secretary, Belli, inserted the comments on the conduct of the majority which occur in them. It is clear that those comments were made before the June Assizes; for, after describing the visit of the majority to Nanda Kumar on 21st April, the reporter observes that this "too plainly indicates their participation in the mysterious intrigues which have been long carried on in the offices of Fowke and Nuncomar. The nature of the intrigues and the legality of them will be best understood by the future event of the trial, at the approaching Assizes."

A note in the report of Kamáladdin's evidence says, "he produced a paper sealed with the same seal to prove he had the seal. The jury compared it with the impression on the bond, and think them the same; each of the impressions showed a small flaw which was in the original seal." I suppose that this note is Sir J. Stephen's authority for remarking, "it seems probable that Commaul's seal was in fact used in sealing the bond, for Commaul produced a paper sealed by himself at an earlier period with the same seal. The impres-

sion of that paper had a flaw in it, which he said existed in the seal itself." I, however, find no evidence in the report that the paper produced was of earlier date, nor does Kámál say anywhere that the flaw existed in the original seal.*

Sir J. Stephen admits that Kamáladdin was a very poor creature, and I shall presently show how little he was to be believed, and how he was connected with Hastings' banyan. His story about his seal in this case wears a suspicious resemblance to his evidence about his seal in the conspiracy case. His servant, Husein Ali, gave evidence in that case also, and must, I think, have been disbelieved, for the accused were acquitted on the matter of the *arzī*. Kamáladdin gave evidence of an alleged confession by Nanda Kumar, always a very suspicious story in an Indian case. Two witnesses, Khwaja Petrus and Munshi Sadaraddin, were called to corroborate him by showing that he had told them what Nanda Kumar had said. Sir J. Stephen considers that their evidence corroborates Kamál's, though he admits that such evidence would probably not be admitted now-a-days. He says, "the accounts given by Khwaja Petrus and Sadaraddin of what Kamáladdin said to them, are more complete than his evidence at the trial. The account given by Kamáladdin in his evidence supplies no reason why Nanda Kumar should make a confession to him. The accounts given by Khwaja Petrus and Sadaraddin explain this." Kamáladdin wanted Nunda Kumar's security, and Nunda Kumar wanted Kamáladdin's evidence." And then he goes on to speak of a suit in the

* I have seen the impression of the seal on the bond. It is a small rectangular seal, and the impression is very faint. If the jury could see the flaw in it which corresponded with another impression, they must have had very good eyes indeed. Besides, the alleged impression is to be found on other documents produced by Kamáladdin. There are some Bengali bonds executed by Kamáladdin in favour of Jagat Set, and in these he is described as Sheikh Mahomed Kamál and Mahomed Kamal Nasaya (at present a rather contemptuous appellation for Mahomedans, and used chiefly in Northern Bengal). I suppose they are the three papers which he said were in a little box which was saved. In one or two of these papers the impression of the seal is quite distinct, and I cannot see any flaw.

Mayor's Court, though in fact there never was one there. Sir J. Stephen omits to notice that the evidence of the two witnesses is more complete than Kamál's only, because it is inconsistent with it. Kamál's story is, that he heard from Mohan Prasad that Nanda Kumar had affixed his seal to a bond and that he went and asked Nanda Kumar about it, who thereon confessed that he had done so. This was two or three months before Kamál got his farm, and so must have occurred in March or April 1772. There was no quarrel then, and Kamál afterwards went and asked Nanda Kumar to be his security—surely a very strange thing to do, if he knew that Nanda Kumar had been forging his name. Neither did Kamál go at once and tell his friends, Petrus and Sadaraddin, about the forgery, as would have been natural for him to do. He did not tell them anything about the matter till the question about the security arose. Sadaraddin fixes the date of the conversation, for he tells us it was in Asarh 1179 (June-July 1772), and Kamál tells that he was going to complain about the time when Nanda Kumar was confined by Mr. Palk, and that Sadaraddin dissuaded him because of Guru Das' appointment. Now, this we know was not made till July. There is also the remarkable statement in Sadaraddin's evidence that four or five days after Kamál had told him about the forgery, he came and told him that he had by intreaty succeeded in inducing Nanda Kumar to be his security. It is, I submit, incredible that Kamál would ask Nanda Kumar to be his security after he has found out that he had forged his name, and he himself had refused to be a party to the fraud. I have elsewhere pointed out the improbability that Kamál would have gone in 1775 to borrow money from Nanda Kumar if he knew that he had forged his name, or that Mohan Prasad would have failed to cite Kamáladdin as a witness in the civil suit, if the seal to the bond was his. There is also the extraordinary passage in Kamál's evidence about his having seen the bond with Nanda Kumar (937), a thing which he could not have done later than 15th January 1770.

In an article which I wrote in the *Calcutta Review* on Warren Hastings in 1878, I described Kamáladdin as the *benamidar* of Kanta Babu. Sir J. Stephen twice (I, 79 note, and 208) observes that the statement, if correct, is no doubt important, as if he stood in that relation to Kanta Babu, he must have been greatly under his influence, and Kanta Babu would, of course, be greatly under the influence of Hastings. Probably Hastings would not have admitted the truth of this remark, for his cue always was to pretend that he knew very little about his banyan's proceedings, and that it would have been improper for him to interfere with him in his business, *i. e.*, in his absorbing so much of the landed property of the country. Sir J. Stephen's remark, however, is true, for there is abundant evidence that Hastings exercised control over his banyan. Kanta was, in fact, Hastings' right hand man, and went with him everywhere; for instance, he was with him at Benares, where we find Hastings dignifying him with the title of Diwan, and threatening Chait Singh's mother if she ventured to trifle with him.

At the time I made the statement referred to by Sir J. Stephen about Kamáladdin's position, I did so on the authority of General Clavering. I have since gone further into the subject, and I think that I can now establish the fact that he was Kanta Babu's *benamidar* or *farzi*. At all events I can prove that he was closely connected in business with him. The most striking proof of this is Kamáladdin's statement in the third petition given to Nanda Kumar. This petition begins with the words, "In the month of Baisakh 1181 (Vilayati), Ram Prosad Mukarjya underfarmed the Thika Khalaris from me, on account of Babu Leekenace and Nundee, giving Mr. Archdekin as his security." There can be no doubt that the name *Babu Leekenace and Nundee* is a misprint for Babu Lok Nath Nandi, who was the son of Kanta Babu. Lok Nath was the person in whose name Kanta held most of his property, Pargana Baharband for instance in the district of Rangpur. Lok Nath was a minor

in 1775, being, in fact, a boy of about twelve years of age, if so much, yet Hastings had the hardihood to describe him, in a revenue consultation of 12th July 1774, as a man of substance and credit. The old records of the Committee of Revenue which are preserved in the Board of Revenue at Calcutta are full of references to Lok Nath Nandi's salt transactions, and Hastings admitted in Council that the thika khalaris belonged to Kanta before Kamáladdin got them, though he maintained that Kanta had been aggrieved and not benefited by Kamáladdin's farm. The translation of Kamáladdin's petition was made by Chalmers, the official translator, so that there is no reason to doubt its correctness. We have, therefore, a clear statement by Kamál, that Kanta Babu was his under-farmer, under the style of Ram Prasad Mukarjya, and we know from Barwell's letters, and from statements of Kamál to the Committee of Revenue, etc., that Kamál's under-farmers were the real beneficiaries of the farms. But recent researches which I have made in the office of the Board of Revenue, enable me to carry the matter still further, though they compel me to enter into wearisome details.

Kamáladdin, though an indigent man, unable, according to Mohan Prasad, to pay off a debt of Rs. 600, was selected by Government in 1772 to be the ostensible farmer of Hijli. This was a very extensive and important charge, for not only was a great amount of salt produced in Hijli, but it also yielded a large land-revenue. According to Kamál's evidence, he furnished, as farmer of Hijli, 375,000 mans of salt, and collected yearly Rs. 75,000 of revenue. Kamál got his farm about the middle of September 1772, and as he was quite unable to manage it, he soon afterwards made it over to one Candip, or Chandrip (Kandarpa ?) Das, who took it in the name of his son Chandi Charan. Kandarpa held the farm till about the 24th December 1773, and then surrendered it again to Kamáladdin. This, however, was a nominal transaction, for Kamál immediately sublet the farm to Basant Rai, or Basant Ram. When Kamál got his farm in 1772, an

elaborate patta or lease was executed,* and in the 31st article thereof it was stipulated, that all the thika khalaris, that is, all the saltworks in the hands of contractors in the pargana, were to be put under Kamál's charge, and that none should be worked by individuals. It was also specified that such persons as did work thika khalaris should be obliged to deliver up the salt at a price fixed by the Government. This is the arrangement referred to by Hastings in his deposition as prosecutor in his conspiracy case, where he says, "Kamál-addin, in the month of December, complained that Mr. Fowke had attempted, by promise and threats, to extort from him a declaration, that he had given bîbes to English gentlemen and mutasaddis for the grant of the thika khalaris, or for the adjustment of accounts relative to them. I am not certain which. These were saltworks not originally included in the lease of the farm of Hijli, but worked by other farmers, by people brought from other parts and afterwards given to the farmer of Hijli to prevent competition." This account differs somewhat from that given by the Committee of Revenue who had the lease before them, and who, no doubt, gave the more correct version of the affair. The Committee go on to say, that, on 11th February 1774, Kamáladdin contracted to supply 75,000 mans of salt to Government, and they observe that the express condition of this contract must necessarily have been, that all the thika khalaris should be yielded up to him; that in March following a general order was given to the Naib Diwan to deliver over all the thika khalaris to the contractor, and to oblige him to repay any advances the proprietors might have made, with an annual interest of twelve per cent. These thika khalaris had been in the hands of several persons, and it appears from a letter by Nanda Kumar, dated 20th May 1774, that he had two of them in the name of his son Guru Das. Kanta Babu was, however, the great holder of them, for he had no less than 401. (Probably the real number was 400, and the one was added to prevent the number ending with a cypher, which natives think unlucky.)

* Fowke measured the document, and found it to be 5½ feet long.

Kanta Babu held these works in the name of his son Lok Nath, that is, the Leekenace of Kamál's petition, and so all the petitions to the Committee of Revenue about them are in the name of Lok Nath. The records of their proceedings are full of his complaints and of counter-charges by the salt agent, Mr. Archdekin. The dispute arose in this way: The arrangement with Kamáladdin making all the thika khalaris over to him took place in February 1774, and therefore in the middle of the working season. Lok Nath complained that by this time he had made 26,000 mans of salt, and had given advances for 17,000 mans more. He therefore asked that 43,000 mans should be made over to him. Upon this the Council by a letter, dated 16th August 1774, and signed by Hastings, Graham, and others, directed the Committee of Revenue to make over 26,000 mans of salt to Lok Nath Nandi at Chitpore. "On its being weighed off to the Company there, you will please to settle with him on the same terms you agreed to allow him in the proceedings of first April last; and for the remainder of the salt which has been manufactured from his advances, you will oblige the farmer, to whom it is to be delivered, to reimburse Lok Nath Nandi the amount of those advances with interest." It must be admitted, therefore, that even if Hastings' account be true that Kanta was much aggrieved by the saltworks being given in farm to Kamál, his patron took care that he should be indemnified as much as possible. There were other people besides Kanta who had made salt before Kamál got his farm, e. g., Baneshwar Ghose, but I do not find that he got delivery of the 5,000 mans which he said he had made. Next month there is a letter from Lok Nath Nandi, dated 23rd September 1774, offering to buy all the thika salt of Hijli, Maisadul, and Tumlook, to be delivered to him at Salkea at Rs. 155 sikka per man of 82 lbs., S. W. including the duties.

In reporting on this proposal the Committee say that salt now sells at Calcutta at Rs. 190 Arcot per man of 82 S. W., and that it is falling in price daily. From a letter of 20th January 1775, we learn that Lok Nath withdrew from his

proposal on account of a dispute about "basket weight." Among the Board of Revenue records, there is a long letter from Archdekin, the Agent, complaining of the highhanded proceedings of Lok Nath Nandi's gomasta, and of his refusing to take over the 26,000 mans on the ground that he expected orders for 40,000. In the proceedings of 21st June 1774, we have Lok Nath's petition giving his account of the dispute. The matter was not settled for a long time; and on 28th May 1775, we have a letter from Archdekin, reporting that Kanta Babu's gomasta had taken away from Rasulpur Ghât 8,000 mans of salt more than he had charchittis (passes) for.

There is thus ample evidence that Kanta Babu was closely connected in business with Kamáladdin, but this is not all. I believe that General Clavering was quite right in saying that the two were partners, though they may have afterwards quarrelled. In my article in the January number of the *Calcutta Review*, I said that apparently Kanta had nothing to do with the Hijli farm; but I have since been led to form the opinion that he had. Basant Rai, who was Kamáladdin's katkinadar, or sublessee in the Hijli farm, appears to have been a dependant of Kanta. He is repeatedly called Basant Ram by Kamáladdin and others, and I believe that he is identical with Basant Ram diwan* who was a servant† of Kanta.

* Some support to this view is given by the President of the Committee of Revenue's remark of 25th October 1775, that Basant Rai was an old matsuddi.

† He is referred to as such in a petition, apparently from the Raja of Bardwan, which is preserved in the proceedings of the Committee of Revenue of 5th June 1775. This petition says that the pargana of Sathsika in Bardwan was settled in 1178 (1771) with Bistu Charan Nandi, the nephew of Kanta; and that in 1180, Kanta gave a four years' lease (katkiua) of it to Basant Ram Diwan. Complaints were made by the rayats to Kanta of Basant Ram's oppressions, and then he dismissed him.

It would also appear that though Kanta held his 401 saltworks in the name of Loknath Nandi, there was a benami below a benami, a double veil in short, and that Loknath's khalaris were held by, or in the name of, Basant Rai, otherwise Basant Ram. I infer this from a petition by one Shama Chakrabarti of June 1775, where he says that he held the thikha khalaris in partnership with Basant Rai, and complains that he had been

Khwaja Petrus was an old ally of Hastings, and, according to M. Raymond, lent him money in 1764, and so enabled

compelled to surrender them to Kamáladdin. Basant Rai, otherwise Basant Ram, was a real person, and appeared before the Committee ; indeed, he was too real to have the farm in his own name. He too had a farzi, *viz.*, his nephew Ajib Rai, a child of five or six. The Board of Revenue records contain most elaborate reports about Kamáladdin's balances, and the action of the Supreme Court in releasing him. Copies of the Court's proceedings are given, and it seems to me that the Court interfered in a monstrous manner. Not only did they twice release Kamál, but they laid it down that the committee must proceed against the under-renter, Basant Rai, before they took action against Kamál. The only ground for this was, apparently, that Government had received rent from Basant Rai ; but as the President of the Committee pointed out, Basant had always made the payments on account of Kamáladdin's farm. It is one of the commonest things in Mafassil practice in India for an undertenant to pay the rent to the zamindar, but it is never considered by our Courts that the zamindar, by receiving such rents, forfeits his recourse against the original lessee. Barwell chose to represent the matter as an instance of the majority's revenging themselves on Kamál, but it was the Committee of Revenue, of whom John Shore was one, who proceeded against Kamál. Nor was it a simple question of refusing to acknowledge Basant Rai, or to receive the rents from him. He might be a man of substance, as Barwell says, but he was no more willing to pay the rent than Kamál was, and made all sorts of objections. It is clear that when once Government was obliged to give up its pursuit of the original tenant, Kamál, there was no hope of realizing the debt, and accordingly it never was paid. At one time there was an arbitration between Kamál and Basant, and Sadaraddin Munshi was the arbitrator—another proof of his being mixed up with Kamál. On a subsequent occasion, when there was no question of protecting a revenue defaulter who was also a serviceable tool of Impey and Hastings, Impey seems to have changed his view about the powers of the Committee of Revenue and in turn allowed them to imprison revenue debtors. I use the guarded expression "seems," because the judgment in *Rom v. Badaradden* shows that the Judges declined to decide if the Committee had power to imprison. What the Judges claimed was a power to inquire if the imprisonment was justifiable.

The following curious note about the fate of Kamáladdin occurs in an anonymous work called "Transactions in India."—Debrett, 1786, p. 244 :

"Many are the instances which might be specified to prove how cruelly the exquisite sensibility of the native Indians are (*sic*) sported with by our countrymen. The tragical story of Kamáladdin will never be forgotten in India, and the dishonour it reflects on our politics will last as long as it is remembered. This man, by the intrigues of party, while the altercation between a majority of the Council and the Governor-General was carried on

him to go home. His brother was Mir Qasim's general,* and was killed, it is supposed, because Mir Qasim suspected him of being in correspondence with Petrusse. According to M. Raymond, this was so far true that Petrusse had written to his brother Gregory at the request of Vansittart and Hastings, and implored him to come over to the English camp. Not long after the trial, Hastings wrote that he would not deny the connection which formerly subsisted between Qasim Ali and himself, adding that it was as well-known to the world as the little advantage he made of it. Only a month after Nanda Kumar was hanged, Hastings gave a remarkable proof of his connection with Mir Qasim by bringing forward, on 7th September 1775, Karim Ula, a *vakil* (agent) of Mir Qasim, as a claimant on behalf of his master for a large sum of money from Bolaqi Das.† On this occasion Colonel Monson

with very little temper or decency on either side, was inveigled to give evidence against Joseph Fowke, Francis Fowke, Maharaja Nanda Kumar, and Rai Radha Charan, on a charge of conspiracy against Warren Hastings, Esq. His evidence was so confused and contradictory, that the verdict was given in favour of the defendants.

"Kamálddin being deep in arrears to Government, these persons had interest enough, as it would seem, to instigate the officers in the revenue department against him. He was consequently imprisoned; but the Supreme Court espousing his cause, he was immediately released by *habeas corpus*. The very next day he was again imprisoned and again released in the same manner. He then sent to Hugli for his son to superintend his affairs during transactions which so unavoidably engrossed and distracted his attention. In coming up the river to Calcutta, the youth was unfortunately drowned. This unexpected disaster, co-operating with his other embarrassments and sufferings, suddenly overwhelmed him with despair. He then became an object of pity and commiseration to all his friends and former acquaintances. And it was not long before he absconded, and has never been heard of since" I may note that this book is thoughtfully written and contains some account of the famine of 1770.

Mohan Prasad, the other principal witness in the forgery case, appears to have died in 1777, for Smout's collection of orders shows that there was a suit between Balgovind and Kissen Pooreah, Mohan Prasad's administratrix, in the fourth term of that year.

* See Bolts, III, App. C, 800 note.

† Was there here some idea of profiting by Nanda Kumar's "forfeiture," or was it merely Hastings' doing a friendly turn to Mir Qasim?

stated that Khwaja Petrus had been looked upon as a suspected person during the war with Mir Qasim, and had been confined as such at the representation of Nanda Kumar. This of course would make Khwaja Petrus an enemy of Nanda Kumar.

Sadaraddin was the munshi of Mr. Graham, an old enemy of Nanda Kumar, and one of those who had in 1772 protested against Guru Das' appointment: In the conspiracy case, Sadaraddin deposed that he was eight years with Mr. Graham, and that when the latter went away, he recommended him to Mr. Barwell. In answer to the question if he was in any employment, he said, "I have no settled wages, but I stay about Mr. Barwell's." From some papers in the Foreign Office, it appears that Sadaraddin had, at one time, been in the service of Nanda Kumar, and had been recommended to Holwell by him. When an inquiry was made in 1761 into certain alleged forgeries by Nanda Kumar, it was supposed that Sadaraddin had written them. A munshi named Selimula told Vansittart that the letters which were found on the qasid (courier) Ram Ratan, and which purported to come from Ram Charan, appeared to be in the handwriting of Sadaraddin; and Hastings, in a letter of 26th November (1764 ?), speaks of Sadaraddin as being an accomplice of Nanda Kufnar. No doubt this is what is referred to in the so-called "Life of Nanda Kumar," where it is said (II, 284) that Munshi Sadaraddin was grievously harassed, though it is wrongly implied that the harassment came from Nanda Kumar. Sadaraddin's intimacy with Kamáladdin, Ganga Govind Singh, and Barwell was abundantly brought out in the course of the three trials; and so early as the 8th May, we have General Clavering asserting that Sadaraddin was a secret mover in the conspiracy against Nanda Kumar.*

* It seems not improbable that Sadaraddin was the person named Sadar-al - Hak Khan, who was afterwards appointed by Hastings, supreme magistrate (faudar-general) at Moorshedabad in supersession of Míahomed Raza Khan. He may have changed his name, as his friend Kamáladdin says he did, on getting an appointment: the *Sáir* speaks of him as getting a title of honour when he was appointed. It also describes the appointment as being very much above his abilities, and says it was given on account of

The witnesses to prove that Silavat's* signature was a forgery, were a brahman named Sabut Pathak and Raja Naba Krishna. The brahman said that he had been Silavat's servant, and spoke very confidently about his handwriting.

Sadar-al-Hak's attaching himself to Hastings and being an assiduous worshipper at the altar of his power. Another thing which makes the identification not unlikely is, that Sadaraddin and Sadar-al-Hak had both been darogahs, or judges of adalats. Sadar-al-Hak was a very old man when he got his appointment, and this agin agrees with the account of Sadaraddin, who must have been an old man, as he was Holwell's munshi before the battle of Plassey. If there had been a Sadar-al-Hak Khan who supported Hastings, and who was distinct from Sadaraddin, we should surely have heard of him in some of the trials. Perhaps some native gentleman who reads this may be able to clear up the matter. Sadar-al-Hak was a native of Gujrat, and was once employed at Bhaugulpore. It seems almost certain that the man was the same, for I find in Appendix No. 121 to the 9th Report mention made of one Sadaraddin Mahomed Khan as holding an office worth Rs. 700 a month as Naib of Mahomed Reza's son Bahram Jang, who was Diwan. Here we seem to see the name in the process of transition, for the munshi has now become Mahomed Khan. I do not think it can be doubted that this Sadaraddin is the same as Sadar-al-Hak. He died apparently in the end of 1780.

When Maclean was negotiating in the East India House, he wrote to Hastings that one proposition of the compromise was, that some mark of favour should be conferred on the black servants who had been dismissed for attachment to him, and that among them, Rajballabh, Kamāladdin, Dalil Rai, and Ganga Govind Singh were specified by name. Truly a shining array of satellites to attend our Eastern Jupiter. He also said that a proposition was made to reinstate Playdell who had been dismissed for a similar cause. This is the man who, according to Impey, was dismissed for signing an address in his favour. Playdell presided at the trial of Radha Churn Mitra in 1765. He was afterwards dismissed by the Court of Directors, so that he was twice turned out. Impey seems to have conferred an appointment on him, for he is described in the Bengal Obituary as a master in Chancery. In 1779 we find him engaged in what was probably the congenial duty of taxing the costs in the case of *Grand v. Francois*. He must have been an old man then, for he was a civilian in Clive's time, and was turned out by the Directors for signing along with Holwell and others an insubordinate letter. He must, therefore, have been three times dismissed. He headed the address to Impey after the trial, and John Robinson (the foreman of the jury, I presume) seconded it. The flowery language of this document, its allusion to breasts glowing with sentiments of gratitude, and its apparently unfounded reference to blank warrants, lead me to believe Robinson drew it up. It is quite in the style of his letter to Farrer.

* Silavat (of an amiable disposition).

It is difficult to say if he was worthy of credit. His Urdu was a little too high for Elliot, who did not fully understand him. Perhaps this may account for what looks like contradictions in his evidence, e. g., he said he left Delhi for the first time nine years before; and in another place, that he was at the battle of Buxar which was fought in 1764. I gather from his evidence that he did not live with Silavat in Calcutta, and if he did not, he could not have had much opportunity of becoming acquainted with his handwriting. He said: "Silavat came to Calcutta and I went home." This sentence immediately follows the mention of the battle of Buxar, and seems to mean, that Silavat went to Calcutta thereafter, and that Sabut went back to Delhi.* It may be noted that this witness' father contradicted himself so grossly that the Court refused to allow him to be recalled. Naba Krishna was by no means so positive as Sabut. The Chief Justice laid stress in his charge on the fact that this witness at once pointed out Silavat's handwriting; but to this it may be rejoined that the papers had already been marked Ex. G, so that the witness might easily guess which papers he had to identify. He was asked if he could swear that the handwriting on the bond was not Silavat's, and answered, "Silavat has wrote several letters to me and Lord Clive, and has wrote several things before me; this is not the kind of writing I have seen him write; but God knows whether it is his handwriting or not."†

* He said, however, that he was with him when he died. Probably it was to this witness, or his father, that Bolaqi left Rs. 100 under the name of Pathakji.

† I have seen the original bond in the High Court. Silavat's signature is on the margin and is crowded and not well written. The words seem to be Gawāsh shud, Silavat wakil Bolaqi Das. I don't think anybody could say of so small a specimen that it was not so-and-so's handwriting, and that the true conclusion was expressed by Naba Krishna when he said, "God knows whether it is his handwriting or not."

Exhibit G is also in the High Court, but I do not feel sure which is the writing said to have been Silavat's. There is some Persian writing on the paper which seem to have been enclosed in the cover marked Ex. G, which does not seem to me to be worse than that in the margin of

Naba Krishna was an old enemy of Nanda Kumar, and, according to Bolts, his character was very bad. He was also intimately connected with Hastings, whom he had known ever since 1750, when he first came out to India. He was then Hastings' Persian munshi, and this introduction was the foundation of Naba Krishna's fortunes. He was a banyan (perhaps the head of his class, for he had been banyan* to Lord Clive, to Major Adams, and afterwards to Clive again); and according to Hastings, banyans were devils. (Gleig, I, 269.) In 1778, Hastings rewarded Naba Krishna for his services (?) by giving him the unique position of a Calcutta taluqdar, and two years later borrowed three lakhs of rupees from him †

the bond. The bond is a very small piece of brown country paper and Silavat had to write on the narrow margin, and so the words are crowded. The Persian in Exhibit G is in a large hand.

* Naba Krishna was given to matrimony, for he married seven wives in succession. He is said to have been the first native who rode in a carriage.

† Hastings also gave Naba Krishna charge of the estate and person of the Bardwan Rajah in 1780 (in revenue language made him Sazawal). Naba Krishna filed a bill in Chancery on 27th June 1792 for the recovery of the three lakhs lent to Hastings; these were sikkas, and at the rate of the claim amounted to £37,500. The bill stated that the money was lent in 1780. The Master of the Rolls dismissed it without going into the question of whether the money had been lent or not, and though the defence admitted some parts of plaintiff's statement of claim to be true. The ground was that the nature of the agreement between the parties was not proved, and the judgment called forth from Naba Krishna's solicitor the comment, that his Honour had laboured very hard to avoid going into the merits. I have inserted the judgment in the appendix. The date of the decree was 13th August 1804, long before which Hastings had admitted before the House of Commons that he had borrowed the money. His words there were—"In the year 1783, when I was actually in want of a sum of money for my private expenses, owing to the Company's not having at that time sufficient cash in their treasury to pay my salary, I borrowed three lakhs of rupees of Rajah Naba Krishna, an inhabitant of Calcutta, whom I desired to call upon me with a bond properly filled up; he did so, but at the time I was going to execute it, he entreated I would rather accept the money than execute the bond. I neither accepted the offer nor refused it, and my determination upon it remained suspended between the alternative of keeping the money as a loan to be repaid, and of taking it and applying it, as I had done other sums, to the Company's use. And there the matter rested till

The above was all the direct evidence of the forgery, and I submit that, even if believed, it was insufficient. Granting that Kamáladdin was Mahomed Kamál, and that Silavat's signature was forged, still it was not proved that the bond was forged. It is not uncommon in India for false attestations to be made to genuine documents, and Nanda Kumar might have affixed Kamál's seal and Silavat's signature to a genuine bond of Bolaqi Das. There was no count charging him with forging the signatures. I have already discussed the evidence of Mohan Prasad and Kista Jiban, and I have also there referred to the other documents in the case. It would seem that the evidence for the prosecution did not

I undertook my journey to Lucknow, when I determined to accept the money to the Company's use."

In February 1805, Hastings wrote to his friend D'Oyley about the satisfaction which the dismissal of Naba Krishna's bill had given him, and mentioned that the Chancellor had been one of his advocates during the process, and so had relinquished the decision to the Master of the Rolls. Larkins, the Accountant-General, was examined at great length about Naba Krishna's loan, and gave very damaging answers. He said that the transaction was entered in Mr. Hastings' private books as a loan, and that he had heard Mr. Hastings say that Naba Krishna had given up the bond to him. He says (Trial, p. 2766)—"Mr. Hastings borrowed money very soon after he arrived in Bengal, and continued in the habit of doing so till he left Bengal." Question : "Do you recollect from whom he borrowed those sums of money?" Answer : "From a variety of people. Mr. Hastings was very indifferent as to the persons from whom he borrowed it." The question was repeated by the managers and the witness said : "I believe I can mention the names of some few persons. Gopal Das' house (this was a Benares house; *vide* Hastings' letter, dated 13th October 1781) was one of them, and many of the bankers—the great shroffs in Calcutta, and from Europeans too. I can give no other answer to the question."

Maharajah Naba Krishna's life has been written by Babu Bipin Behari Mitra. It appears from this work that Naba Krishna and Hastings were born in the same year and became acquainted in 1750. In 1753, Naba Krishna accompanied Hastings to Qasim Basár. From the same work we learn the traditional origin of Hastings' affection for Kanta Babu, *viz.*, that the latter sheltered him in his house at Qasim Basár for some days, before he made his escape to Falta. Kanta's full name was Krishna Kanta Nandi, and the illustrious Maharani Sarnamai is the widow of his great grandson.

occupy the Court more than two days, for we find witnesses for the defence being examined on Sunday, the 11th. Indeed, the whole of the prosecution might have been got through in one day by a Court independent of interpreters. At the close of the case for the prosecution, Mr. Farrer submitted that there was no evidence of the forgery of the bond, but he was overruled by the Court. We are not told what his grounds were, but it seems to me very likely that he took the point that, at most, it was only the attestations and not the bond itself which were proved to be forged. Sir J. Stephen says that no notice of the difference between the forgery of the deed and the forgery of the attestations seems to have been taken by the counsel for the prisoner, but surely his argument that there was no proof of the forgery of the bond meant this, for he could not have denied that there was evidence of the forgery of the attestations.

CHAPTER XII

THE TRIAL CONTINUED.

The Witnesses for the Defence.

BEFORE calling his witnesses, Mr. Farrer shortly stated his defence. He said he would call witnesses who were present when Bolaqi executed the bond; that two witnesses to the bond, now dead, were living when the transaction came to the knowledge of Mohan Prasad; that he would produce letters in Bolaqi Das' handwriting, admitting the bond and the circumstances of the jewels, and an account signed by Mohan Prasad and Padma Mohan Das, in the presence of Ganga Vishnu, in which the sum contained in the bond was included, as also a paper in the handwriting of Bolaqi Das, in which the particulars of the transaction were stated; and that entries were made of the same in the books that were lost, and letters of correspondence between Bolaqi Das and Maharaja Nanda Kumar, in which the transaction was mentioned. The two witnesses here referred to were, no doubt, Mahtab Rai and Mahomed Kamál, the first of whom appears to have died in January 1773, and the other in 1770.

The account mentioned in Ex. M, of which I have said so much. The letters of Bolaqi were produced, but not allowed to be given in evidence, on account of their not being sealed or signed by Bolaqi.

The first witness was Taj Rai, a Khatri by caste, and a native of Chinsura. He deposed that Mahtab Rai was his elder brother, and proved a letter written by himself and sealed with his brother's seal. He said that his brother and he were the sons of Saheb Rai, and the grandsons of Bangu Lal; that his brother was born at Bareai Bele (?) Adampur,

near Dhanekhali, and that his brother died there about two and-a-half years ago. The next two witnesses examined were Hazari Mal and Kashi Nath. We are not told who called them, but it appears likely that they were called by the Court. This was in accordance with the practice throughout the trial. My reasons for thinking that these two witnesses were called by the Court are: 1st—That Taj Rai's evidence was interrupted for their examination. 2nd—That I do not think that the defence would call witnesses who did not support their case. 3rd—Hazari Mal and Kashi Nath were connected with the prosecution rather than with the defence. Hazari was one of the partners in the bank which Hastings had created and Kashi Nath was, or had been, a banyan, he having been banyan to Mr. Russell. (Bolts, III, App. F, 529.) He was afterwards plaintiff in the famous Kasijora case. 4th—Hazari Mal* signed the address to the Chief Justice which a witness for the defence was hardly likely to do. 5th—in his charge Impey does not speak of Hazari Mal and Kashi Nath as witnesses for the defence. However, even if Hazari Mal were a witness for the defence, he cannot be said to have contradicted Taj Rai. The latter said that his brother had been known to Hazari Mal, and Hazari Mal admitted that he knew a Mahtab Rai, but said that he would be now about sixty, whereas Taj Rai said that he would be now thirty-six and-a-half. No stress, however, can be laid on native statements about age. Hazari was asked if he was sure that Mahtab was over twenty-six, and answered: "He was certainly more than twenty-six; I before said he was fifty years; I cannot tell to a year." He

* Hazari Mal was the wife's brother and servant of Amichand, and one of the executors of his will. He had some connection with Mohan Prasad, for in 1793 a Mr. George Williamson, Vendu-Master (auctioneer; *vide Hobson-Jobson*) to the Company, deposed that Hazari Mal came to him, hearing he was about to dismiss his banyan, and desired that Williamson would employ him. "He introduced Dial Chand (apparently the adopted son of Amichand) and Mohan Prasad, saying that they would be the ostensible persons, but that he himself would transact my business. Mohan Prasad was a merchant here." Montrou : Precedents, &c., on the Hindu Will, p. 27.

had only seen him once or twice, and his recollection of him was evidently very imperfect. He knew nothing about his relations. Kashi Nath knew a Mahtab Rai, but this Mahtab Rai was quite distinct from Taj Rai's brother. The Mahtab Rai he knew was the son of Bangu Lal, and belonged to Bardwan.

He did not even know the witness Taj Rai. When Taj Rai was confronted with him, he said that there was another Bangu Lal who lived at Hugli, and was in service at Mankar.* This quite agreed with Taj Rai's description of his grandfather, Bangu Lal, who, he said, lived at Satgaon and was farmer of Mankar. Taj Rai was fully corroborated by Rup Narain Chaudhari; he was a very competent witness, for he was peshkar to the Rani of Bardwan, and was chosen by the majority, on 30th December 1774, to be joint guardian with her of her son. Hastings referred to him in his remarks of 13th March as one of his enemies. Rup Narain deposed that Taj Rai and Mahtab Rai were brothers; that Mahtab wrote him a letter in Bhadra 1179, and that he died in Magh 1179, that is, January-February 1773. Sir J. Stephen says that Taj Rai said in cross-examination that he had his brother's seal, and could produce it, but that he does not appear to have been asked to produce it, and that this, as far as it goes, indicates that it did not correspond with the seal on the bond. This is not fairly stated. A letter written by Taj Rai for his brother, and sealed on the envelope with his brother's seal, was produced in Court and marked Exhibit I. It was addressed to Rup Narain Chaudhari, and was apparently the letter of Bhadra 1179, deposed to by Rup Narain. If this impression had not agreed with that on the bond, we should certainly have heard of it. It was probably this impression

* Mankar is in Bardwan, and is a station on the E. I. Railway. It is in the Bood-Bood Munsif, and the Munsif (Babu Nanda Lal De) has kindly informed me that he has ascertained that there was a Khatri named Taju Rai in Mankar, and that he had connections with Murshidabad. He had five brothers, but the family is extinct now. There is only one Khatri family now in Mankar, and it is connected with Taju Rai, through a female.

which was identified by the witness Chaitanya Nath (991).* This witness also proved the existence of Mahtab Rai (988). Sir J. Stephen has taken no notice of this fact, or of the fact of his recognizing the impression of Mahtab Rai's seal.

Four witnesses deposed to the execution of the bond :—Jai Deb Chaubé, Chaitanya Nath, Lala Doman Singh, and Yar Mahomed. They were cross-examined with great severity, but I do not see that they were broken down in any way. Sir J. Stephen says that there were some inconsistencies in their evidence. "For instance, Jai Deb Chaubé said that there was no particular conversation at the sealing of the deed, and that the inkstand used was before Bolaqi Das, when he and the others came into the room. Lala Doman Singh said that Bolaqi Das told Silavat that he had settled with Nanda Kumar about the jewels; that Nanda Kumar was his patron, and it would not be proper to have a difference with him, and that the inkstand was brought in by the khidmatgar."

This passage shows with how little care Sir J. Stephen has read the evidence. It is quite true that Doman Singh spoke to a conversation about the jewels, and that he said that the inkstand was brought in by a khidmatgar; and it is also true that Jai Deb said there was no particular conversation, etc.; but Sir J. Stephen, to use a phrase of his own (I, 54 note), has omitted to "observe the explanation." This is simply that the conversation and the bringing in of the inkstand occurred before Jai Deb arrived at Bolaqi's house. The story told by the three witnesses—Jai Deb, Chaitanya Nath, and Yar Mahomed—is, that the giving of the bond was settled by Bolaqi at Nanda Kumar's house, and then Bolaqi went home in his palki to have it written. The three witnesses and Mahomed Kamál followed him, but as they walked and did not

* This is another point set at rest by the discoveries in the High Court. Ex. I is still there. It is an envelope addressed to Rup Narain Chanderi, and bears on its outside Mahtab's seal. The exhibit is dated 10th June, and has the note, "Exhibited to prove the seal of a witness Mahtab Rai."

"I have compared the impression with that on the bond, and I think they
The High Court Record-keeper is also of this opinion.

leave till a little later (1011), they arrived some time after Bolaqi. Meanwhile, Lala Doman Singh,* who was in Bolaqi's house before the latter arrived, heard the conversation between Bolaqi and Silavat, and saw the inkstand brought in. He distinctly says in his evidence that these things occurred before Jai Deb, and the others came in (997). Nor is Sir J. Stephen correct in his subsequent remark, that there was an extraordinary and unnatural agreement between the witnesses, and that they all gave the same evidence as to the order in which the witnesses sealed the bond, and as to Silavat alone signing.

A similar statement was made by the Chief Justice, who said that the witnesses were uniformly accurate in describing the order in which the witnesses sealed and signed. In fact, however, there are some differences in their depositions. Jai Deb and Doman Singh said that nobody used a pen except Silavat and the writer, but Chaitanya Nath said (990) that both Mahtab and Mahomed Kamál wrote something over their seals. Again, Jai Deb said that he did not remember whether Mahtab Rai sealed after Mahomed Kamál, or Silavat signed after him, Mahomed Kamál.

Jai Deb Chaubé and Yar Mahomed proved that Mahomed Kamál was dead. In connection with this there was an alleged statement of Jai Deb which the Chief Justice dwelt upon in this charge, but which I cannot believe that he ever uttered. Jai Deb was a brahmāñ, and yet he is represented as deposing that when he saw the body being carried out, he enquired whether it was a brahman or a Masalman going to

* Sir J. S. says that all the four witnesses to the bond were dependants of Nanda Kumar. This is not strictly correct, for Lala Doman Singh was never in Nanda Kumar's service or dependant on him. He was for several years in the service of Rajah Dhiraj Narain, younger brother of the unfortunate Rajah Ram Narain, and came to Calcutta on his business and that of his relative, Rajah Basant (?) Rai. In one place he says he is in service with Radha Charan, but subsequently seems to say that he is servant to Rajah Basant Rai. He appears to have been also in Hastings' service, for he accompanied him to Benares (in 1773?). Radha Charan, though the son-in-law of Nanda Kumar, had an appointment of his own, that of vakil to the Nawab.

be buried. The witness denied afterwards that he ever said anything of the kind, and it is absurd to suppose that he would ask if it was a brahman who was going to be buried. Elliot must have misunderstood him.

Lala Doman Singh was acquainted with Persian, and proved Bolaqi's seal on some envelopes. On this part of the case there is the following note in the report: "He (Doman Singh) proves a seal of Bolaqi Das to three envelopes, which had been opened, and which the counsel for the prisoner offered in evidence, but was overruled by the Court, there being no signature from Bolaqi Das to the papers enclosed, nor any proof whose handwriting they were, or that those papers were originally enclosed in the envelopes; because if they were allowed to be given in evidence, they might impose what papers they pleased on the Court by putting them into the envelopes. The jury having desired to look at the papers, the foreman observed on inspecting them, that it was an insult to their understanding to offer those papers in evidence as papers of the date which they purported to be of."

"(The counsel for the prisoner, speaking in a warm and improper manner to the jury.)" *

Court.—"This is a manner in which the jury ought not, and shall not, be spoken to. The prisoner ought not to suffer from the intemperance of his advocate. You, gentlemen of the jury, ought not to receive any prejudice to the prisoner on that account, nor from the papers themselves, which, not having been admitted in evidence, you should not have seen; whatever observation you have made you should forget; it is from what is given in evidence only that you are to determine."

Jury.—"We will receive no prejudice from it. We shall consider it the same as if we had not seen it; we will only determine by the evidence produced."

It appears from this note, and from the Chief Justice's charge, that it was the seeming recency of the writing which

* I do not wonder at Farrer's losing his temper. The jury's remark was most ignorant and reckless, as an inspection of the jewels-bond and the other Persian papers of the trial will show.

made the jury feel themselves insulted. Now, though we are not told what the letters were, it may be presumed that they were the letters referred to in Mr. Farrer's opening remarks, as admissions by Bolaqi of the bond and the circumstances of the jewels. They could not, then, be older than August 1765, and might be as recent as 1769; and I say unhesitatingly, that it was rash and improper in the jury to conclude dogmatically that the papers could not be ten or six years old.* It is doubtful if any of them could read the papers, and it is certain that some of them could not. But even if the letters had been in English, I think it would have been foolish to feel insulted at being asked to believe that the letters had been written a few years ago. A large experience of such questions has taught me that it is most unsafe to determine from the mere look of a native document whether it is old or recent. Sir J. Stephen shirks the question of the recency of the writing, but justifies the conduct of the jury by referring to the letters being unauthenticated. The question of non-authentication was not the point taken by the jury, and it was a point for the Court and not for them to take. It, however, merits elucidation. The facts were that the letters were not signed or sealed by anybody, but that Bolaqi's seal was impressed on the envelopes. This no doubt appeared strange to Impey and his brother Judges, and was one at least of the reasons why he would not allow the papers to be put in evidence. Possibly this was correct according to English law, but Farrer was also correct in complaining (*vide* Impey's charge). "Persian letters sealed

* The letter which Nanda Kumar was said to have written to Kamál in 1763 is in the High Court, being Ex. B. The writing is wonderfully dark and fresh-looking, and few persons would think that it could be more than twenty years old. Evidently there was something in the native ink which enabled the vernacular documents of the time to last much longer than the English papers. For instance, there is an immense sheet containing the indictment in Persian and English. The English writing has so faded as to have become undecipherable, while the Persian has preserved its jettness and is quite distinct.

Ex. B is not signed or sealed. There is a small seal on the cover with the signature Nanda Kumar and the date.

in the usual mode of the country (were) not allowed to be given in evidence; by our law letters sealed in the usual mode in England would."

The following note by the translator of the *Sair Matakhirin* (II, 394) explains the custom: "Letters are never signed in India (but the Gentoos sign). The writer only, if he be a man of importance, writes the word *baiz*, or even *iz*, in large characters; now as the seal whereon the writer's name is engraved, is put on the outside of the letter only, together with the place, name, and date; and all that is only set down on the cover, one may judge from thence what degree of authenticity such vouchers would be allowed in a European Court of justice." There is another note (I, 250) where it is said that the emperor, as well as the grandees of India, sign no otherwise than by writing the word *baiz** at the bottom of the letter in a much larger character; their name, which is always the same as their seal, being stamped on the cover of the letter with printer's ink. Captain Williams was examined by the House of Commons before the impeachment, and the question was put to him (Bengal Appendix, 244), "In what manner are Persian letters authenticated or signed?" Answer: "Letters from and to equals, generally by a seal on the cover of the letter; and to inferiors, on the bottom of the letter." In the same volume there is a letter from Captain Broome to Williams saying, "unless you could find the cover of the letter, it is impossible to know the writer or the person written to, it being usual to write the name of the latter on the cover only, and to affix the seal of the former without any superscription of the writer's name, as is customary with us." In appendix to the 11th Report there is another instance in point. The Council were inquiring into the misconduct of Dalil Rai, and a petition by the vakil of Ram Krishna, Rani Bhowani's adopted son, was put in. Hastings objected that it was not authenticated, and Clavering replied, "The Persian letter

A sort of cypher or monogram formerly affixed to a written paper in
of a signature by Mahomedan functionaries and persons of rank."—
Wilson's Glossary, 48, Vol. II.

delivered by Rajah Ram Krishna's vakil has his seal upon the cover of it, which is, I understand, the usual mark by which all letters are authenticated." To this Hastings answered : " It is not very usual for persons not in high authority to affix any signature to letters written in common course of business ; but I believe this is seldom omitted on petitions." I submit that these extracts are conclusive. I do not put them forth as showing that Impey was wrong in rejecting the letters, though I think I might urge that too, but granting he was right according to English law, and that he was bound to administer that law and no other, it is clear that Nanda Kumar's case was seriously injured by the rejection of the documents.* If they had been forgeries, would not the forger have taken care to make them complete and both signed and sealed ?

It looks as if the first note of Haji Mastapha (M. Raymond) had been written with reference to Nanda Kumar's trial. The remark that the " Gentoos sign " does not invalidate my argument, for, though Bolaqi was a Hindu, he was one much conversant with Mahomedans, and the letters were in Persian, and as such would be written in accordance with Mahomedan customs. We are not told if the envelopes bore the date of sealing, but it seems clear that they did, or else that the letters were dated, for otherwise the jury could not have spoken of their purporting to be of a certain date. Impey said in his charge : " You cast your eyes on those letters and observed on the recency of the writing. You thought them an imposition ; but as they were not given in evidence, I desired you would not suffer it to make any impression on you. I have no apprehension the laws of any country would permit them to be given in evidence. They were letters enclosed in a cover sealed with the seal of Bolaqi Das, but were separated from the covers which had been

* I submit also that when Impey was so strict about applying the English law of evidence, he should have been equally so about the English definitions of the deeds mentioned in 2 Geo. II, and should not have hanged Nanda Kumar for forging a paper as to which he could not determine whether it was a promissory note or a bond.

opened. Any writings might have been put into those covers. There was no signature to the letters. There was no attempt to prove that the direction of the covers were (*sic*) of the same handwriting with the letters themselves, or that they were in the handwriting of Bolaqi Das, or of any of his writers. If this was allowed, any evidence might be fabricated to serve all purposes. Letters in England have the signature of the writer, and his handwriting may be proved. It is impossible these could be given in evidence." In those days * the rule of English law was, I believe, that two papers could not be compared in order to ascertain if they were written by the same person, and apparently this was the rule adopted on the trial, for otherwise the jury might have looked at the directions on the covers and have seen if they agreed with the handwriting of the letters. No doubt this absurd rule would make the task of proving the letters a difficult one, but still the Court might have called Kista Jiban to say if he knew the handwriting. As the letters were rejected before they were given in evidence, we do not know what proofs of genuineness Farrer was prepared to give. It would seem from Yar Mahomed's evidence that one of the letters had been sent by Nanda Kumar to his attorney, Mr. Jarret, through the witness, Jai Deb Chaubé (1017-1018). Nanda Kumar's mouth, of course, was closed, but Jai Deb and Jarret might have given evidence of this, and it seems very unlikely that the prisoner could not have at least attempted to prove the handwriting, etc. He could at least have called some one who was present when the letters were delivered, and who had heard them read. The fact seems to be that it was Impey's ignorance of native customs which caused the letters to be thus summarily rejected, and that this was another instance of Nanda Kumar's suffering from the ignorance of his judges. It was perhaps after this scene that Nanda Kumar sent for his counsel and told him that he was convinced that the Court were his enemies, and that therefore he proposed at

* Field's Law of Evidence, p. 433, quoting Taylor.

once to submit to his fate and to give up defending himself any more. Sir J. Stephen is angry with me for the use I made of this incident in a former article, and charges me with inverting Farrer's meaning. I cannot see that I have done so. Nanda Kumar distinctly, "very strongly, and very solemnly," asked Farrer if he did not think that his witnesses had been very differently treated by the Court to what the prosecutor's had been, and Farrer was unable to deny it. I say he was unable, because he admits that he avoided giving a direct answer to the question. Now, why should he do this, unless he felt that Nanda Kumar's remark was just? Or, why should Farrer take upon himself the very delicate and dangerous task of expostulating with the Judges (his proceeding really amounted to this), unless he felt that there was ground for Nanda Kumar's complaint. One of the Judges, Sir Robert Chambers, acknowledged that there was ground for the remark, and went the length of sending a private message to Nanda Kumar. Nor do I think I was wrong in saying that Farrer stated that his witnesses had been badly treated by the Judges, and that when he remonstrated, they were treated worse. His actual words are: "I declare, I think, that the prisoner's witnesses fared worse afterwards than they had done before." And no doubt they did, if Mir Asad and Yar Mahomed were examined after the remonstrance. The words *fared worse* are relative, and indicate that the witnesses fared badly before, and in what way did they fare badly except in being subjected to long and severe cross-examinations by the Judges? This was the bad treatment of which Nanda Kumar complained, and which Chambers regretted. The Judges excused their conduct by saying to Farrer that the defence was suspicious, and that the witnesses for the defence appeared to be prepared, etc. But was not Kamál's story suspicious? Should they not have cross-examined him as to why he did not write out the *arzi* and send it sealed; why he did not produce the *sanad* for changing his name; where he was when he wrote the letter; what had become of the enclosure in Nanda Kumar's letter, &c.

I now come to the evidence of Mir Asad Ali on which Sir Elijah Impey and Mr. J. Stephen have laid so much stress.

As I have already mentioned, this witness produced a receipt, dated 1764, and which purported to be sealed by Bolaqi Das. The circumstances connected therewith require a full examination, and I shall, therefore, discuss them at length.

*Mir Asad's Receipt.**

Sir J. Stephen doubts Mir Asad's story, because he (I, 134) holds it to have been proved at the trial that Mir Qasim retreated from Bihar for the last time in May 1764, and because he thinks that Rohtas was taken by the English earlier in the year.

Now it is not the case that Mir Qasim retreated from Bihar for the last time in May 1764, nor does Mr. Hurst, the authority quoted by Sir James, say so.

Captain Camac is represented in the report as saying that Shuja-ad-Daula and Mir Qasim retreated to Benares on May

* "He produced a paper, wrapped in a wax-cloth, closely pressed and doubled into the size of less than an inch square, bound tightly down with a string, which was cut open, and the paper carefully unfolded, and produced as the original receipt." Note in report, p. 60, of Cadell's edition.

Mir Asad had kept the receipt in an amulet worn on the arm (*taviz bazu*). There is nothing improbable in this. The original receipt is in the High Court and is marked N. It is for one lakh and 90,000 rupis. The paper is small and thin, and shows traces of having been folded. The writing is very short, there being only about two lines. At the top is written Nawab Ali Jah Bahadur (Mir Qasim) to show that it was the Nawab's money, and because it would not have been respectful to put his name in the body of the receipt. Then it is stated that the money was received by the slave (Bolaqi) *babanda rasid* at a place near (bamaqám muttasil) the river Dúrgauti. Then follows Bolaqi's small oval (called *bádámi*, or almond shaped, in the report) seal, and below this comes the line giving the date 14 Rabi-as-Sáni 1178. The date given is that of the writing only, and it is possible that this may have occurred some days after the delivery. Mir Asad did not positively say that the receipt was given on the very day that the treasure was delivered, and the reference in the receipt to the place of payment, and the separation in the writing between that part and the part containing the date, rather favour the inference that the receipt was written some days subsequently. On the back of the receipt is written in English, 14 Rabi-as-Sáni equal to October 8, 1764.

3rd, 1764 and remained there; but I think this statement is due to bad punctuation and to a misprint. The date, May 3rd, refers to the previous clause, and Benares is possibly a misprint for Baxar. This at all events is certain—they did not retreat on May 3rd. After the cannonade on that day, the two armies remained at Bankipur, "looking at one another," as Captain Williams expresses it for some weeks, and when, at the end of May, Shuja-ad-Daula and Mir Qasim moved westward, they at first only went to Maner. Later, they retreated to Baxar, and there remained during the rains. Shuja-ad-Daula seems to have crossed into his own territories, but I believe that Mir Qasim did not leave Bihar till after the battle of Baxar. It was not until Major Munro joined the army in August that the English resumed the offensive, and he did not march out of cantonments till October 9th. During Major Carnac's time, as Vansittart wrote to the Council, "our army lay intrenched, surrounded and insulted, under the walls of Patna, until they lost both their spirit and their discipline, while Shuja-ad-Daula, at full liberty, possessed or ravaged all the Bihar province, and took up their winter quarters in the midst of it." (Bolts, III, App. A, 139.) (*sic.*)

Nor is it the case that Rohtas was taken before May 1764. It was certainly in Mir Qasim's possession up to about the end of September, and, according to some authorities, it was not surrendered to the English till after the battle of Baxar.

Buchanan, who visited the fortress and who gives a circumstantial account of Goddard's proceedings, says that it was surrendered after the battle of Baxar. (Montgomery Martin's *Eastern India*, I, 434.) And he has been followed in this statement by Thornton and Hunter, and by the author of "*Chronicles of Rohtas*."—(*Calcutta Review*, April 1878.)

It is difficult to suppose Buchanan could have mistaken the date of the surrender; but, on the other hand, there are papers in the Calcutta Foreign Office which show almost conclusively that Rohtas fell into the hands of the English about the end of September. First, there is a letter of September 11th, from Munro to Goddard, telling him that Shah Mal, the Governor

of Rohtas, had agreed to surrender the fort, and directing Goddard to proceed to take delivery of the fort as soon as he had been joined by some troops from Patna.

Secondly, there is a letter of September 16th, from Munro to the Council, stating that Captains Goddard and Stables had gone to take possession of Rohtas.

Finally, the President informs the Calcutta Board, on the 11th or 15th October (it is not clear which), that he had received a letter from Major Munro, dated the 2nd instant, reporting the surrender of Rohtas to Captain Goddard's detachment.

My reasons for calling this evidence not quite conclusive are, that I have not seen any letter from Goddard himself, and that it appears from Major Munro's letter of September 11th, that he had no clear idea of the geography of the country. He tells Goddard, who was then at Tikari, that, upon the arrival of some troops from Patna, he is to march to Culvar (Koilwar), "sending harkarus with my letter to Shah Mal and one from yourself, acquainting him with your intentions, and he will, upon seeing you and your party, come over to you with boats to carry your own detachment over the river and will put you in possession of the fort." Now Koilwar is near the mouth of the Són and a long way from Rohtas. It was also held by the Vizier's troops, and Munro had some difficulty in crossing there on October 10th. It is just possible that Shah Mal may have surrendered the keys of the fort in the end of September, but that Goddard did not cross over and take possession till later. Captain Broome, in his history of the Bengal Army, says that Goddard afterwards marched down from Rohtas and took part in the engagement at Koilwar on October 10th. But I do not know his authority for this and it is singular that if Goddard was there on the 10th, he did not take part in the battle of Baxar on the 23rd. (See his evidence.)

The statement that Rohtas was surrendered before the battle of Baxar is also supported to some extent by the *Sair-al-Mata-kherin*; but the account there given is not clear; there are no

dates ; and though the description of the surrender precedes that of the battle of Baxar, much cannot be inferred from this, as the death of Mir Jafar, which did not take place till January 1765, is also described earlier in the volume than the battle. As regards the truth of Mir Asad's story, however, it does not matter whether Rohtas was surrendered in the end of September, or in October or November. In any case, Mir Asad may have brought treasure from the fort for which he received a receipt on October 11th.

One important point brought out by the Foreign Office records is, that Mir Asad Ali was no myth, but a real person who was at Rohtas in August or September 1764. In a letter-book containing translations of Persian letters, we find (p. 486) a letter (No. 247) from Shah Mal, the Governor of Rohtas, to Major Munro, dated September 6th, and received in Calcutta on the 22nd idem. In it he writes : "I have had the honour to receive three letters from you, the first by your harkaru, the second by Gholam Husain Khan (the author of the *Sair*), and the third by Mehdi Ali Khan, and I returned you three answers, one by the harkaru, and the others by the aforesaid gentleman, and therein represented my situation to you. Besides which I have written you three other letters and forwarded them to you, the first by a qasid of my own, the second by *Mir Asad Ali*, and the third by a harkaru in my own service. Doubtless you must have received them. I remain firm in this place in the hopes of your favour and protection." Then he adds that Mir Solyman has arrived on the part of the Vizier. In another letter (No. 248) received in Calcutta, September 22nd, but not dated, Shah Mal says : "You write that *Mir Asad Ali* has not yet arrived with the said papers. This surprises me much, perhaps he may have met with some accident on the road, or perhaps he may have gone by way of Tikari, and on that account may have been so long on his journey. . . . *Mir Asad Ali* is a great friend of Dr. Fullarton ; when he arrives, he will inform you of everything ; however, let not the sending of a detachment hither be deferred in case of his not arriving speedily."

The paper which Mir Asad Ali was to convey to Major Munro was a statement of the conditions on which Shah Mal was willing to surrender the fort. It, or a copy of it which Shah Mal sent when he heard that Mir Asad had not arrived, was received by Munro and forwarded to Calcutta. The fact that Mir Asad was entrusted with a paper so important, and that he was also to explain matters *vivid voce*, show that he was a man of some position, and his being a friend of Fullerton's affords some evidence that he was an honest man.* It is by no means unlikely that he was paid Rs. 2,000, as he says he was, for his services in negotiating the surrender. Nor does the taking part in this transaction cast any imputation on his honour. He was Mir Qasim's servant, and Mir Qasim apparently preferred that Rohtas should fall into the hands of the English, rather than into those of the Vizier and of his faithless servant, Mir Solyman. It is quite possible that Mir Asad may have returned from Patna in September with Munro's acceptance of Shah Mal's proposals, and may afterwards have conveyed treasure from Rohtas to Mir Qasim.

We know that after the battle of Gheriah, 2nd August 1763, Mir Qasim removed his wives and his treasure to Rohtas, and that they remained there for many months.† This

* In the letter-book at the F. O., there is a good deal of correspondence about one Asud Khan Bahadur, but I believe he was a different person from Mir Asad Ali, because he is described (No. 190) as a jemadar in the service of Shuja-ad-Daula and styled Mirza Asad Khan Bahadur. Prior to the battle of Baxar, Major Munro had a good deal of correspondence with some Moghul cavalry officers who were willing to leave the Vizier and enter the English service. One of their letters has been published by Mr. Long in his Selections from the Records (I, 358, No. 716). Mr. Long also publishes a letter from Shah Mal (No. 717), and his terms of capitulation (No. 718), but he incorrectly describes them as sent by the Nawab. In the F. O. there is a copy of a letter (No. 253), dated October 3rd, 1764, and sent to Asad Khan by the President of the Council.

† On 26th August 1763, the unfortunate Dr. Anderson wrote in his Patna Diary:—"To-day the Begam set out on her march towards Rohtasgarh; she has 1,500 (cars) raths, 3 camels, 100 elephants, very many boats, besides elephant-coaches; 1,200 horse and 2,000 burkandazes are for her escort, having all his treasure with her."

fact—that Mir Qasim had treasure at Rohtas—is, I submit, a material corroboration of Mir Asad's evidence.*

We may, I think, credit Shuja-ad-Daula and his treasurer with being likely to know what they were about when they put Bolaqi in confinement and placed guards over Mir Qasim. They must have known that there was money to be got, but that it was not in the camp. Had it been there, they could probably have laid hands on it at once, for Shuja-ad-Daula's army was the larger, and Mir Qasim was too timid a man to have offered resistance. They must have been aware, as we are now, that Mir Qasim had treasure in Rohtas, and that it was thus out of their reach unless they could put pressure on Mir Qasim and his servants, and compel them to send for money for their ransom. What then more natural than to begin with Bolaqi, the banker and army paymaster? There is therefore no difficulty in believing that Mir Qasim may have given orders shortly before the battle of Baxar for money to be brought from Rohtas or that Mir Asad brought it. The only question is about the receipt's having been given at Dúrgauti, for it is said that Mir Qasim and his army were encamped at Baxar for a month or so before the battle. But, in the first place, the receipt was not dated Dúrgauti, though Dúrgauti was mentioned in it, and it is possible that Mir Asad Ali may have forgotten the exact spot where he delivered up the treasure. In the next place, we do not know where Bolaqi was confined by Shuja-ad-Daula's treasurer. Kista Jiban does not distinctly say that it was at Baxar, and it is not impossible that he may have been removed to some safe

* A more thorough examination of *Calcutta Review* articles which bear on his subject would have saved Sir J. S. some errors. The "Chronicles of Rhotas" (April 1878) would have acquainted him with the fact of Mir Qasim's treasure being at Rohtas. It is the more singular that he has not perused his article, because it is contained in a number in which is another to which he makes frequent reference.

Again he writes of Impey's letter to Governor Johnstone (I, 255) that it "had never been published" and "I discovered it—in the British Museum." Sir John Kaye had, however, already discovered it and published it in the C. R. (VII, 478, or Selections, II, 572.)

place in the rear of the army, or he might have been taken to the banks of the Dúrgauti as being nearer to Rohtas and the treasure. The Chief Justice said in his charge that Mir Asad stated that the transaction took place when Bolaqi was *with the army* at Dúrgauti, but I do not find this in the report. It may be an inference from what Mir Asad said, but it is not what he said, and it may be wrong.

It is a curious circumstance that in M. Raymond's (Haji Mastapha's) translation of the *Sair* (353 and 354—the pages are misnumbered 347 and 348), the name Dúrgauti is given to the little stream behind Baxar, where so many persons perished after the battle. It is described as separating the Vizier's camp from the Emperor's. If this is correct, there is no longer any difficulty about the receipt, but I am bound to say that I cannot find the word Dúrgauti in my copies of the Persian *Sair* and its Urdu translation, and that the river in question is generally called the Thora Nadi. It does not, however, seem likely that the translator would insert the same Dúrgauti without some authority, and it may be, therefore, that he found it in the MS. from which he translated. Besides this, if he who seems to have passed through Baxar two years after the battle could make a mistake about the name of the river, so too might the writer of Mir Asad's receipt. Captain Williams speaks of the Dúrgauti as a nala running parallel to the Karmmnasha and about four miles from it.*

* Captain Camac said he believed there was a town called Doorgooty on the banks of the Són, but this appears to be another of his mistakes. The Dúrgauti (so-called from its rising near a temple of Dúrga) rises in the Kaimur Hills, flows N. and N. W., then N. E. till it joins the Karmmnasha, 26 miles south-west of Baxar. Jahanabad stands on it. There is a post-town called Dúrgauti, on the west bank of the Dúrgauti, and not far from the point where this is crossed by the Grand Trunk Road. This place is also known as Ohaharia. About a mile south is the police outpost of Dúrgauti. The town of Dúrgauti is 36 miles from Saseram and 32 S. W. from Baxar. I am indebted for most of the above information to the kindness of Mr. Jenkins, the Subdivisional Officer of Baxar. Sir J. S. erroneously calls Captain Camac Carnac. It is strange that he did not know that Carnac was a Brigadier-General in 1765. Camac was also a witness in the conspiracy case brought by Hastings, he being called to explain the meaning of

Mir Asad stated that he delivered the treasure to Bolaqi Das at a place called Dues Gauty (Dúrgauti), westward of Saseram (998). Perhaps some discredit was thrown on this evidence by Captain Camac's erroneous statement at the trial that the Dúrgauti falls into the Són. As Mir Qasim was in possession of Rhotas till the end of September, it is by no means improbable that he, or the Vizier, may have had troops encamped on the Dúrgauti in October. We know from Kista Jiban that the army was once there, and it would be unfair to press too closely his recollection of the movements of an army so long before. He might be mistaken by weeks as to the time at which the army went into cantonments at Baxar. He was still less likely to be able to say where Bolaqi was on October 11th, for he himself must then have been in confinement.

Kista Jiban was a witness for the prosecution, as well as for the defence, and it seems to have been his misfortune, and that of Nanda Kumar, that he has believed when he gave evidence for the prosecution and disbelieved when he supported the defence. Both Impey and Sir J. Stephen appear to have forgotten that Kista Jiban was the servant of Ganga Vishnu, and thus wholly dependent at the time of the trial on Mohan Prasad; for, at that date, Ganga Vishnu was an invalid and living in Mohan Prasad's house. When Kista Jiban said that Mohan Prasad was a great man and that he was afraid of him, the cross-examining Judges tauntingly inquired whether the Maharaja was not a greater man. This, I think, was both heartless and ridiculous. A brahman and a Maharaja might be intrinsically a greater man than a Calcutta broker, but the former was in the felon's dock, while the latter was all in all to the poor clerk who depended on him for bread. It seems to me that Kista Jiban was willing to tell

the word *baramad*. It may seem curious that a soldier was called on to explain a revenue term. The explanation is that he had been appointed by Hastings, in November 1773, to the charge of one of his grand revenue divisions (Bardwan, Medinipur, Birbhum, etc.) (Harington, II, 202.) This may account also for his zeal in twice giving evidence.

the truth, but that he was terribly afraid of Mohan Prasad. Impey's remark in his charge that Kista Jiban was not afraid to contradict Mohan Prasad about the army-books seems to me ill-founded. The matter was not of moment, and Kista Jiban may not at first have been aware that he was contradicting Mohan Prasad. I presume that he was not in Court while Mohan Prasad was under examination. Besides, he was asked about the books and had to answer. He might have done the same about showing the *karárnáma* to Mohan Prasad if he had been asked.* Kista Jiban did not recollect seeing Mir Asad with the army, but he admitted that he was not acquainted with even the principal servants of Mir Qasim, and it does not appear that Mir Asad was a principal servant. If Mir Asad's story be true, he was in camp for a short time only, as he brought the treasure from Rohtas and then returned there.† Kista Jiban must have been in a state of much trepidation at Baxar, and thus unlikely to be an accurate observer. He was in a somewhat confused state also when giving his evidence, for he began by saying that he was imprisoned *after* the battle.

What strikes me very strongly is that nothing was gained by mentioning Dúrgauti in the receipt if it was a forgery. I have shown that Mir Asad was Mir Qasim's servant, and that he was in Rohtas in 1764. He must have known where the army was in October, and he, or whomever he got to forge the receipt, could as easily have put Baxar as Dúrgauti into it. Dúrgauti could not have been chosen to get rid of Kista Jiban's presence, for Mir Asad said that the former was present when the money was paid. Whether this was a mistake

* Sir J. S. has not read Kista Jiban's evidence carefully. The Chief Justice said in his charge that Kista Jiban "was not afraid to write the letter." Hereupon Sir J. S. remarks (I, 162), "I do not know what letter is here referred to." It is, of course, the letter to Nanda Kumar which Kista Jiban refers to about a dozen times in his deposition. (1060-08.)

† This statement would not be disproved by the fact that Rohtas surrendered before the battle of Baxar, for Shah Mal, the governor, seems to have remained there for sometime with Captain Goddard. (Sair-al Mata-kherin, II, 338.)

of his or of Kista Jiban's I cannot tell; but the rule is, that when one witness asserts a fact and another denies it, there is a presumption in favour of the positive statement if both witnesses are equally credible. Now, Mir Asad was a man of some position. He received, as has been said, Rs. 2,000 from Major Munro, the conqueror of Baxar, and he was later superintendent (darogha) of the Patna Mint under Shitab Rai who knew and loved a brave man. He was an up-country-man, and came to Bengal with Ali Gohar, afterwards Shah Alam. Then he became the servant successively of Mir Qasim and Mir Jafar. He seems to me to have given his deposition in an offhand, soldier-like manner such as would impress one with a belief in his veracity. He was cross-examined in a minute and, as I think, in a harsh and cruel manner, and he gave satisfactory replies. Thus, he was asked why he did not make over the receipt to Mir Qasim, and as to how the mastaufi or accountant could make up his books without the receipt? To this he answered very reasonably that the country was in great trouble, that Mir Qasim's household was in much disorder, and that the Nawab himself (Mir Qasim) ran away. He added that when his master went away he was at Rohtas, to which place his master had sent him.

We need not wonder at the receipt not being made over to the mastaufi, even if we suppose that accounts were being kept at Baxar. Ordinarily, an escort keeps the receipts which he gets. If the money was paid to Bolaqi when he was in confinement, he only nominally received it, and can only have given a receipt to satisfy the commander of the escort. Why should he enter the money in his books if it was at once swept away by his gaolers? As Kista Jiban very simply and truly said, "When a man is in confinement, he who confines him will take the money; whatever Bolaqi Das had, Khaliq Yakut (?) took from him."

I therefore see no objection to Mir Asad's story, on the ground that Kista Jiban could not find an entry of the payment in the army-books. If Bolaqi was in confinement at the time, he would hardly have his books with him, and if

he had, he was not likely to charge himself with money which he did not really get. He may have entered the receipt in his private papers which nobody used to see, and a boxful of which was lost at the battle of Baxar (1024). Or it may have been entered on the Persian department of Bolaqi's business, about which Kista Jiban knew nothing.

Another point about which Mir Asad was severely cross-examined was as to how he had the receipt brought from Murshidabad. To this he answered clearly enough, that he had married a Bengali lady at Murshidabad,* and that he had sent a letter desiring her to send him his amulet in which the receipt was wrapped up. She did so, and sent a note along with it, and this seems to have excited the suspicions of the Judges, for they asked, "Did she write it herself?" To which the witness replied by asking another question, "Do women know how to write?" Then Mir Asad was asked who brought the receipt to him from Murshidabad, and he answered, "One Shaikh Bazu" (?), and he described his appearance, and offered to bring him next day. He spoke of this Bazu first as his servant, and then as his *rafiq*, and the Judges seem to have thought that this was a contradiction, and cross-examined him about it, though in the glossary to the trial, which, I presume, was drawn up by Elliot, we are told, "*rafiq* literally a friend, but means all through the trial a half-friend and half-dependant."

The cross-examination as to how Nanda Kumar came to know about the receipt was, I think, unfair, because, according to the practice of those days, the prisoner's mouth was closed. Although Mir Asad offered to produce Bazu, the Court do not seem to have accepted his offer. On the other hand, they called, or allowed to be called, no less than five Englishmen, among whom were a Colonel, a Major, and a Captain, to contradict Mir Asad! No doubt the appearance of so many

* In a list of persons appointed to offices at Murshidabad by Mazafar Jang (Mahomed Reza Khan), we find a Mir Asad Ali entered as drawing a monthly pay of Rs. 25. This was in 1781. *Vide Appendix 121, 9th Report of the House of Commons.*

honourable gentlemen was calculated to impress a jury, which was in part composed of East Indians,* and which could not be expected to know that Captain Camac's geography was incorrect. This plan of calling rebutting evidence seems to have been followed all through the trial. Whenever a witness said anything in favour of the defence, witnesses were called to contradict him. Thus, when Mohan Das was examined and said that he was a merchant, one Jugal Latty (?) was called in, apparently to discredit him. So too was Yeandle, the gaoler, and apparently also Durham, the counsel for the prosecution, called in to contradict Manahar Mitra. All this may have been in accordance with the English practice of the day. This is a point which I must leave to Sir James Stephen to decide, but to me, in my ignorance, it seems strange, that, after the case for the prosecution had closed, they were allowed to give rebutting evidence. One does not see why this should not have been followed by surrebutting evidence on the part of the defence, and so on *ad infinitum*.†

* Mr. Long (C. R. Sel., I, 789) tells us that Weston was an East Indian, and it is probable that others of the jury were so too. Some of them were, at all events, country-born, for Impey said in his charge, "some I see who were born here." Englishwomen were scarce in those days, and it is probable that most of the country-borns were half-breeds like Weston, who was the son of the Recorder of the Mayor's Court. In any case, men, born and bred in India could not have had home training.

† I do not understand how Impey could tell the jury in his charge that no person had been called to impeach the witnesses brought by the defendant, unless he meant only that no one had been called to depose against their characters. Many were called to contradict them, and also to show that they were biassed. For example, Yeandle, the gaoler, was called to show that Manahar Mitra had shown sympathy with Nanda Kumar by visiting him in prison. The Judges too directed their cross-examination towards injuring the characters of the witnesses for the defence.

Some of their questions indicate a ludicrous ignorance of native manners. For example, when Mohan Das said he was a merchant and lived in Calcutta, but his family stayed at Cossimbazar, he was asked why he did not live with his family? His answer was, women don't like travelling, they live at Cossimbazar, where they get their livelihood easiest. The next question was how many wives he had? Probably to their surprise he said he had only one.

An important point about the receipt, if it was genuine, is that it shows that Bolaqi executed papers in Persian, and sealed, but did not sign them. This was the way in which the bond alleged to be forged was executed, and we learn from Kista Jiban, that Bolaqi executed Persian papers in this way. He tells us (1035) that Bolaqi used to sign Nagari papers, and put his seal on those in Persian. He also said that when Mir Qasim's sipahis brought drafts for their pay, Bolaqi Das took the drafts from them, and gave them a paper in Persian, on which he put his seal. This passage is interesting as showing that Bolaqi acted as army paymaster for Mir Qasim, and that Mir Asad's receipt was such as Bolaqi would have been likely to give.

On the whole, I can see no good reason for rejecting Mir Asad's evidence, and if it was true, it was a strong minicile of the case for the defence. Sir E. Impey may be excused for doubting it as he had been only eight months in India, and had not access to histories or maps. There is less excuse for Sir J. Stephen, who has, indeed, been altogether unfortunate in his remarks about the receipt. In addition to errors already noticed, he tells us that it was dated 28th Assum (Aswin) 1174. Half of this mistake is due to Mr. Elliot or to a misprint, for Elliot is made to say 1174, though probably he really said 1170, but the other half is Sir J. Stephen's own. Elliot did not say that the receipt was dated 28th Aswin 1174. The only date on the receipt was the Muhammedan one, 14 Rabi-as-Sani, and what Elliot is reported to have said is that this date corresponds to 28th Aswin 1174. In fact, the date seems to correspond to one a day or two later, the end of Aswin, or the beginning of Kartik 1170. This brings the date nearer to that of the battle, but does not, I think, increase the improbability of the receipt's being genuine.

I think we may fairly draw some inference in favour of Mir Asad's veracity from the fact that the prosecution against him for perjury was unsuccessful. This we know, from a letter of Impey to the Earl of Rochford, dated January 20th, 1776. According to the account therein given by him, it was

the jury who asked the Court to prosecute the principal witnesses for the defence, whereas it would appear from Brix's letter to Farrer that the prosecution was undertaken at the instance of the Court. The important fact, however, is, that the proceedings were abortive, Impey's account being that "from the testimony having been delivered in Persian and interpreted to the Court, and want of skill in drawing the indictment, it was found impracticable to prosecute the offenders to conviction"

I have already discussed the evidence of Kista Jiban; but as so much stress has been laid upon his testimony by the apologists of Impey and Hastings, I think I ought to add a few more words on the subject. The first thing I wish to point out is that Kista Jiban acknowledged that he knew nothing of the accounts of the Murshidabad house. But it must have been in the accounts of that house, if anywhere, that there was a note of the deposit of the jewels. Kista Jiban's not knowing about the jewels was therefore no reason for distrusting the story. He was not even in Bolaqi's service at the time of the deposit, or for some years afterwards, for the jewels were deposited in 1758, and Kista Jiban began his service with Bolaqi 12 * or 13 years before 1775.

Impey said in his speech before the House of Commons that Kista Jiban was the voluntary accuser of Nanda Kumar before the Judges who committed him; and added, "his information, signed Mr. Justice LeMaistre and Mr. Justice Hyde, is in my hand."

Kista Jiban's deposition of 6th May has not yet been found among the High Court Records, and so I cannot say if Impey's account of it is correct. Nor does it appear to have been shown to Kista Jiban at the time, so that he might have an opportunity of saying if it had been correctly recorded. But it appears from Kista Jiban's evidence that if he did accuse the Raja on 6th May, this was contrary to his evidence in the Civil Court, for he said, "Mohan Prasad and I

* Cadell's Edition, p. 80. .

were on bad terms when the affair was in the *Adalat*. I gave evidence in favour of Maharaja; the complaint was that Maharaja had taken money oppressively. I gave evidence that he did not."

The only other witnesses whom I need say anything about are Manahar Mitra and Ram Nath. Manahar said that Mohan Prasad sent for him three days before the Maharaja was committed to jail, and showed him a bond in which there was mention of pearls (the jewels-bond), and tried to get him to say that it was in his handwriting. He showed him two *tips* also, and said that if he would say that they were in his handwriting, the Maharaja would be a great liar and meet with great punishment. He also said, "I do not want you to tell me for nothing; I will give you 4 or 5,000 rupis." The witness refused to say that the documents were in his handwriting, and then Mohan Prasad said, "Well, if you will not say it is your handwriting, find out a man that will say it is his handwriting; whatever is to be given, I will give him; I will likewise make you joyful. Mohan Prasad said, enquire for such a man. I answered, I cannot do this. I said he was advising me to do a very bad business, and I went from thence."

Mohan Prasad denied that he had ever shown Manahar the bond, and said that the only time he had shown him a copy of the bond was some two years ago.* Apparently he denied having seen Manahar shortly before the Raja's commitment, and at all events, he denied having had any talk with him about the bond. He denied having seen Manahar within a week before the commitment at his house. Against this we have the evidence of Manahar, and also that of Kista Jiban, who said that he had seen Manahar come to Mohan Prasad's house ten or twelve days before the Raja's commitment. Manahar was contradicted by Mr. Durham about his having seen the bond with Mohan Prasad exactly three

* Showing Manahar a copy could not help Mohan Prasad in discovering who wrote the original. I am of opinion, therefore, that Manahar's evidence is true, and that the original was shown to him.

days before the commitment, but either of them might have been mistaken by a day. There is an important admission in Mohan Prasad's evidence that he showed the bond to Jagat Chand, Nanda Kumar's son-in-law, and to Khwaja Petruse, which shows that they were concerned in the getting up of the case. Mr. Durham also said that he sent for Manahar, and showed him the bond in the presence of Mohan Prasad and Jagat Chand.

Ram Nath Das was originally a witness for the prosecution, and had been examined as such on 6th May. At the trial, however, the Crown did not call him, and he was examined by the defence.

There is a discrepancy in his evidence as to when he had an interview with Mohan Prasad. In one place he said it was nine or ten months before he was examined before the Judges; and in another, that it was ten or twelve days before the Raja's commitment. Perhaps he had two interviews, but it looks to me more likely that the word *months* is a misprint. The question was put to him. Was not this 15 days before the Maharaja was taken up? His reply was, "I said it was ten or twelve days." But what he did say, according to the report, was that it was ten or twelve *months* before. Ram Nath said that he took a message from Nanda Kumar to Mohan Prasad about his giving up the prosecution, and that Mohan Prasad made the remarkable reply that he had told a great many English gentlemen of the affair and could not desist. One of his expressions was: "Think within yourself how can I desist?" I submit that this tallies with Nanda Kumar's assertion that Mohan Prasad had frequent interviews with Hastings, and that here at least we have Farrer attempting to show that Mohan Prasad was not the real prosecutor. Mohan Prasad was willing to desist, apparently, but could not on account of the English gentlemen. Ram Nath also admitted that Mohan Prasad had lent him money.

A witness named Gopi Nath Das deposed that, on 9th Chait (20th March), Ram Nath told him that he had taken a bazar in farm, that Mohan Prasad had paid the expenses of his

house, and given him Rs. 300 to give evidence. According to Ram Nath's account, it was Gopi Nath who tried to bribe him. I have already intimated that very likely this Ram Nath was the man who accused Naba Krishna, and of whom Bolts tells us so much.

Two other witnesses, Ataram Bosu and Nimai Das, deposed that Mohan Prasad's character was bad.

On the last day of the trial, Mr. J. Stewart was called in to produce the books of the Council, but informed the Court that the Board had forbidden him to bring them. We learn from the note on this subject that the books were sent for to discredit Yar Mahomed, witness for the defence, by showing that he had been guilty of perjury before the Council, and had been censured for that. It was the counsel for the Crown who stated this, and the only question of interest in the matter is, how he came to know of the occurrence. Stewart, or Stuart, was the Secretary of the Council, and a protégé of Hastings. He had come out to India apparently as his private secretary, for Hancock, writing in 1772, says he was then private secretary. He was a son of Lord Bute, and so connected with influential persons.* He was one of those who were said to have suffered for their attachment to Hastings, for the majority afterwards dismissed him, and he took part with Macleane in the intrigues at the India Office. It is not improbable that Durham got his information from Stewart, if indeed he did not get it from Hastings himself. At all events, there is a curious reference to Yar Mahomed in one of Hastings' letters. Writing to Graham and Macleane, on 29th April 1775, he says: "Mr.

* Francis thought he had given mortal offence to Lord Bute by insufficient attention to one of his sons. Francis, whether in *propria persona*, or as Junius, had a great dislike to Scotchmen, and it is curious to find him (*Memoirs*, II, 200) designating them by the peculiar phrase "children of an ancient nation," an expression which resembles that of "an ancient nation" which Junius uses in his first letter to Lord Mansfield.

I find from Farrer's evidence that Stewart was foreman of the grand jury, and that he asked that Elliot might interpret to the grand jury when they were sitting on the bill against Nanda Kumar.

Graham will remember Yar Mahomed." This may refer to some evidence which he had given.

It is difficult to see how Mohan Prasad, if he was unconnected with Hastings, could have heard of Yar Mahomed's having been censured by the Board. The members were bound to secrecy, but this would not prevent Hastings from telling Mohan Prasad or Duiham, for he, on other occasions, broke his oath on this point.

CHAPTER XIII.

THE TRIAL CONTINUED.

The Charge to the Jury.

THE charge was delivered by Sir Elijah Impey. It was short and unfavorable to the prisoner. The evidence was recapitulated, but it is clear, from the time taken by the Chief Justice, that he must have abridged the depositions very much. No distinct notice was taken of Ex. M, nor of the improbability that Padma Mohan would join in a fraud on his master's family, and one which was very little, if at all, to his own advantage. Though the jury were told not to take any prejudice against the prisoner for not calling Ganga Vishnu, nothing was said of his loss by not getting his evidence or by the death of Padma Mohan. The delay in the prosecution was alluded to, but it was suggested that this might be accounted for by the papers not having been delivered out of the Mayor's Court. This was a very inadequate explanation, for Ganga Vishnu and Padma Mohan had the papers for months before they were filed in Court, and Mohan Prasad's story was that he suspected forgery from the beginning. Nor was it pointed out that if Ganga Vishnu could institute a civil suit in 1772, he could equally well have instituted a criminal prosecution then. The production of the original bond was as much required for the civil suit as for the criminal trial. The jury were desired not to suffer their judgments to be biassed, or the prisoner to be in any way prejudiced by any matter whatsoever which had not been given in evidence, and almost in the same breath they were encouraged to rely on their private knowledge of the characters of Khwaja Petrus and Mohan Prasad, and to determine, in

this way, if it was likely that Mohan Prasad would accuse an innocent person ! The following words of the charge deserve to be quoted here. Impey said: " Much depends in this prosecution on the evidence of Mohan Prasad ; you must judge how far his credit has been shaken ; *most of you know him* ; you must determine how far he deserves credit, and how probable it is that he would, through malice, or any other corrupt motive, accuse an innocent person of a capital crime. If you think him capable of it, you should not give the least attention to his evidence." No distinct reference was here made to the evidence of Manahar Mitra and Ram Nath, though it went to show that Mohan Prasad had tried to suborn evidence, and that the prosecution was being maintained at the instance of English gentlemen. The deaths of the attesting witnesses were referred to, but this was followed by what seems to me a foolish and cruel sneer. After saying that it was a great hardship to Nanda Kumar if Mohan Prasad had it in his power to carry on an effectual prosecution before (apparently it was only a hardship on this condition), that the trial should take place when the witnesses to the bond were dead ; the Chief Justice added, " though, to be sure, this hardship is much diminished, as there are so many witnesses still alive who were present at the execution of it."

This remark was either ironical, in which case it was cruel and unworthy of a Judge charging a jury in a case of a capital crime, or it showed gross ignorance. A Judge, acquainted with Indian cases, or even with ordinary human nature, would have known that when genuine eviuence is unavailable, recourse is often had to perjury.

Even if the four witnesses, produced by Nanda Kumar, were present at the execution of the bond, the hardship to Nanda Kumar was not diminished, for it could not be expected that the jury would give as much weight to witnesses not mentioned in the deed, as to those who had subscribed it. Speaking of the writer of the bond, Impey twice called him a Moor, and animadverted on the fact that no account had been given of him. He also said that Bolaqi had a writer called Bal

Krishna ; that there is no evidence that he wrote the bond, and that he was—the Chief Justice thought—known to one of the witnesses to the bond. According to the report, this last remark is without foundation. None of the attesting witnesses spoke of knowing the writer, and none of them called him a Moor, that is, a Mahomedan. Unless, therefore, there are two misprints in the report, it would seem that Impey did not know the difference between a Moor and a moharir (clerk) ! The latter word is often pronounced moëri, which might account for the mistake being made by a careless man ignorant of the language. The Chief Justice then commented on the fact that Silavat had not written the bond. He said : "A witness says that Silavat was a Persian writer, as well as vakil to Bolaqi Das, and Krishna Jiban seems to confirm it. Being asked what Persian writer Bolaqi had at that time, he answered, he had one named Bal Krishna, and Silavat also understood Persian. It is not said to be of his writing, and if Silavat acted in that capacity, what occasion had Bolaqi Das to call for another writer ?" Now, according to the report, Kista Jiban did not say that Silavat understood Persian, and as he admitted that he himself was ignorant of it, his testimony to Silavat's knowledge would not have been worth much, even if he had given it. He was asked : "Had Bolaqi Das any munshi ?" and answered : "He had a munshi called Balkopen (?) ; he had also a vakil called Silavat." Impey's notion, that Kista Jiban's saying that Silavat understood Persian confirms the statement that he was a Persian writer, reminds us of Sir J. Stephen's idea that, because Impey could understand Persian, therefore he could read it. Neither of these learned Judges seem to have been aware that the reading and writing of Persian manuscripts are a very different thing from understanding it when spoken. Silavat was the vakil, and hardly likely to do munshi's work, especially if his services were also required as a witness. Besides, Sabut Pathak deposed that Silavat did not write a good hand, and in this he was to some extent confirmed by Naba Krishna, so that here we may have a good reason why he was not employed to write an import-

ant bond.* Another remark of Impey's about the bond was, that all the witnesses agreed that no directions were given in the room to the writer before the people came from Maharaja Nanda Kumar's. Now, as only one witness deposed to what occurred before the people came from Nanda Kumar's, the word *all* is inappropriate. No notice was taken of the inconsistency between Kamál's evidence and that of Petruse and Sadaraddin, nor of the omission to show that Kamál had given evidence in the Civil Court. No notice was taken of the hardship to the prisoner caused by letters sealed in the usual mode of the country not being admissible in evidence, or of the rashness of the jury in pronouncing on their age. The main defects of the charge, however, seem to me to be that the Chief Justice did not point out the weakness of the prosecutor's case, and that he laid the whole burden of proof on the defence. The unlikelihood of Nanda Kumar's committing forgery was but slightly referred to, and the jury were almost called upon to convict him in order to save the character of Mohan Prasad.

Three times was the attention of the jury called to this point, and each time in strong and inflammatory language. They were told that if Mohan Prasad knew of the *karárnáma*, the prosecution was most horrid and diabolical; that he was in that case guilty of a crime more horrid than murder; that if the defence was believed, an indelible mark of infamy would be fixed on the prosecutor, and they were asked if, from their knowledge of Mohan Prasad, it was likely that he would accuse an innocent person of a capital crime.

The evidence of Mir Asad Ali was unjustly aspersed, and advantage was taken of this to cast discredit on the whole of the evidence for the defence. First, it was assumed, without proof, and contrary to all probability, that Mir Asad's receipt was a forgery, and then this was made a handle for suggesting perjury against the other witnesses. Taj Rai was disparaged

* The handwriting of the bond (Ex. A) is better than that of Silavat's signature.

because he said that his brother was well-known to Kashi Nath Babu, whereas Kashi Nath did not know him. According to the report, however, Taj Rai did not say that his brother was well-known to Kashi Nath, but only that he had heard that his brother had gone to Bardwan with Kashi Nath, who had promised to give him employment. As Kashi Nath said that 500 or 1,000 people had gone with him, expecting employment, he might well have forgotten a poor umedwar (candidate) such as Mahtab Rai. No doubt some of the defects in Impey's charge were due to his ignorance of the language and the country, and to his inexperience in the art of charging juries, for I suppose this was the first charge he ever delivered. One would be inclined to make allowances on this account, if he had taken more pains; but by his own admission, he only took a few minutes to recollect himself. How could he expect to deal satisfactorily with a difficult and novel case after so little preparation, and at an hour when he and everyone concerned in the case should have been in their beds!

Sir J. Stephen admits that the case for the prosecution was not a strong one, and that it was little more than a *prima facie* case. Impey's fault was that he did not notice this to the jury, but that, on the contrary, he directed them to convict Nanda Kumar if they disbelieved the defence. His words were, and they were uttered almost at the closing of the charge: "The nature of the defence is such, that if it is not believed, it must prove fatal to the party, for if you do not believe it, you determine that it is supported by perjury, and that of an aggravated kind, as it attempts to fix perjury, and subornation of perjury on the prosecutor and his witnesses." Even Sir J. Stephen deserts Impey here, and says in a note that he thinks this goes too far; to bolster up a good case by perjury is not an uncommon thing in India. The value of the newspaper panegyrics on Sir J. Stephen's book is illustrated by the fact that the *Times'* reviewer actually quotes this note of Sir J. Stephen as a *caveat* against Impey's too great leniency to the prisoner, and reckons it as one of the fourteen instances in

which Sir J. Stephen has shown that Impey was extremely favourable to the accused !! I suppose the reviewer remembered that Sir J. Stephen had said that there was not a remark in the charge which he would himself have been ashamed to make, and consequently never dreamt that he would round upon Impey in this way. I believe that I am speaking within bounds when I say that, if any Sessions Judge were to make such a remark as that of Impey in his charge, the High Court would order a new trial. Why Impey should have spoken of the perjury as being of an aggravated kind, I cannot understand. I should have said it was a very mitigated form of perjury, for it was not given to convict anyone, but to obtain the release of an aged brahman from a stale and unjust charge got up from political motives, and from a sentence abhorrent to native ideas.*

Farrer was not allowed to address the jury. This is a point which has a bearing on the question if Nanda Kumar had a fair trial. The following observations by Mr. Forsyth in his *Hortensius*, p. 365, are worth reading :—

“ It would be difficult to cite an instance where the injustice of the rule, which prevented the advocate of a prisoner charged with felony from speaking in his behalf, was more glaringly exhibited than in the case of Maharaja Nundocumar or Nuncomar, who was tried at Calcutta in the month of June 1775 for the forgery of a bond. The jury consisted of Englishmen, inhabitants of Calcutta, and the prisoner was utterly unacquainted with the English language. This was also the case with most of the witnesses for the Crown, so that it was necessary to conduct the proceedings through the medium of sworn interpreters. Under these circumstances, the counsel for the Raja made the very reasonable request, that he should be permitted to address the Court in his behalf, but this was refused ; and in charging the jury, the Chief Justice, Sir Elijah Impey, said : ‘ By the laws of England,

* Granting, too, that Nanda Kumar's witnesses were perjurers, what evidence was there that he had suborned them, and why should he have been dealt with more severely on account of their fault ?

the counsel for prisoners charged with felony are not allowed to observe on the evidence to the jury, but are to confine themselves to matters of law.' He felt, however, what a grievous hardship was thereby inflicted upon a prisoner in the position of the Maharaja, tried by a jury of foreigners, who were ignorant of the language in which he must have spoken if he had addressed them, and he therefore added : 'But I told them (the counsel) that, if they would deliver to me any observations they wished to be made to the jury, I would submit them to you and give them their full force, by which means they will have the same advantages as they would have had in a civil case.' But what a mockery was this! A few meagre notes embracing the chief points of defence, such as an advocate would put down on paper to assist his memory while speaking, had been handed to the Court, and these were read *verbatim* to the jury by the Chief Justice, accompanied by a running commentary of his own. And this he called giving the prisoner the same advantage which he would have had if his counsel had been allowed to make an eloquent appeal in his behalf. The result of the trial is well-known. Nanda Kumar was convicted and hanged."*

It has been argued that the addresses to the Court after the conclusion of the trial proves that it was fairly conducted, and that it gave satisfaction to the community.

I think that the value of these addresses is correctly stated in the following extract from a minute of the majority, dated 15th September 1775 : "In one of the addresses the famous

* If the law did not allow of Farrer's addressing the Court, why was Nanda Kumar not allowed to address the jury in his own language? Some of them would have understood.

Farrer submitted early in the trial that in England a prisoner, from his knowledge of the language, had an opportunity of hearing the evidence and making his own defence, which Maharaja Nanda Kumar was deprived of. He therefore thought it reasonable that his counsel should be permitted to make a defence for him.

To this the Court replied that all the evidence had been given in a language understood by the prisoner, and that any defence he chose to make would be interpreted to the Court.

Naba Krishna takes the lead, with the title of Maharaja, and is followed by Kanta Babu and Santiram Singh,* banyans of the Governor, and Mr. (Samuel) Middleton and the whole tribe of banyans.

"The second appears under the auspices of Mr. Playdell and Mr. Robinson, who have been both turned out of the Company's service.

"The third is headed by the Armenian Khwaja Petruse, whose connections with Qasim Ali Khan are well-known, and which probably are not yet ended."

In Playdell and Robinson's address there is a fine burst of eloquence, which reminds us of Robinson's letter to Farrer, and surely came from the same author.

They say: "We particularly felt our breasts glow† with the warmest sentiments of gratitude when we heard you, from the highest seat of justice, supported by the unanimous voice of your brethren, reprobate with every just mark of indignation, the insidious attempt to introduce into practice the granting of blank subpœnas for the attendance of witnesses; so detestable an instrument of oppression in the hands of wicked or powerful men might have produced the full effect of the edicts of the inquisition, or the *lettres de cachet* (of) the most arbitrary state. Our reputations, our fortunes, and perhaps our lives would have been in that case left at the mercy of every profligate informer who might have been detached into the country, loaded with blank subpœnas, to fish for evidence in any suit or prosecution, among an abject or timid people, ignorant of the nature of these writs, who would have considered them merely as mandates from authority, to swear as they were directed, and being ready to sacrifice both honour and religion to the dread of power."

* Santiram was a brother or other near relative of Kanta Babu, I believe. Haji Mastapha says of him that he made a fortune of 59 lakhs under his kind but too supine master (Samuel Middleton) in 1773-75, and in 1776, suffered him to be carried to jail for a sum of forty thousand rupis.

† In Calcutta, men's breasts glow in the month of June from more intelligible causes.

Now, the curious thing is, that there is not a word about the application for blank subpoenas in the report of the forgery trial, so that here again either there is a misrepresentation, or the report is imperfect. The majority, and I believe Mr. Farrer also, denied that any such application had ever been made.



CHAPTER XIV.

PROCEEDINGS AFTER THE VERDICT.

SIR J. STEPHEN is very positive that sentence was not passed on Nanda Kumar on the 16th June, but it appears that his only reason for this is that Farrer afterwards moved for arrest of judgment. He says that to move in arrest of judgment, after a man was sentenced to be hanged, would be like moving in arrest of execution after he had been hanged. I admit my unfamiliarity with the technical language of English criminal law, and that I may have made a mistake here, but Sir J. Stephen's reasoning does not seem to me conclusive. Farrer was absent when the verdict was brought in, and sentence may have been passed in his absence, and yet he have been allowed afterwards to move against it. I remember a case in the Calcutta Supreme Court; it was the famous one of Sib Krishna Bannarji, and my impression is, that in it sentence of transportation was passed on one of the prisoners for subordination of perjury, and that immediately afterwards his counsel was allowed to move in arrest of judgment, the Judge ordering that the sentence should not be recorded. In Nanda Kumar's case, apparently, no sentence was ever recorded, that is, no judgment was ever entered up. All that occurred was that the Judges signed the calendar,* and it appears from Hyde J.'s note, quoted by Mr. Belchambers, that this was not done till 24th July. The calendar contained other cases besides that of Nanda Kumar, and this partly explains why Chambers signed it, even though he objected to the hanging of him. Hyde's note is corroborated by Yeandle the jailor's affidavit,

* Impey said in his speech that the calendars were the only warrants for execution in Calcutta. This may partly account for the delay in Nanda Kumar's execution. The calendar would not be signed till the end of the Assizes, and that was not till the middle of July.

if any corroboration is needed, for Yeandle says that the interval between the condemnation and the execution was about twenty days. I find, too, that the Nawab Mubarak-ad-Daula petitioned the Council by a letter, dated 21st June, though not received till the 27th idem, to suspend the execution of Nanda Kumar till the pleasure of the King of England should be known, which shows that sentence had been already passed. But if Sir J Stephen is correct, sentence was not passed before the 23rd or 24th June. I submit, too, that Farrer's phrase, *definitive sentence*, would seem to point to a previous sentence, and to imply that the one now passed was final.

There is another circumstance which seems to indicate that sentence was passed on 16th June. The original indictment is still in the High Court. It is an immense sheet of stout paper, and appears to contain the charges both in Persian and in English. The English writing, however, is so faded as to be almost, if not quite, undecipherable, while the Persian, which is entered above each count of the English, is as black and clear as if it had been written a few years ago. I commend this fact to the attention of Sir Louis Jackson, who thinks that the jury were justified in feeling insulted at being asked to believe that a Persian document which looked recent had, in fact, been written six or seven years ago.

Sir Louis Jackson might as a griff (he tells us himself he was a young man at the time) have believed that a forger would fabricate a letter and its envelope, and yet not see that the one fitted into the other, but I should have thought a retired High Court Judge would have known better. However, this is a digression. The point I want to refer to is, that at the top of the indictment are written the words "Plea not guilty" and "Verdict guilty."

Then on the back of the indictment there were the names of the witnesses for the prosecution, but they are now undecipherable. Also on the reverse side and at the top are the words Guilty Sus. per coll. The latter three being very faint. Now these abbreviated words (for

suspendatur per collum, let him be hanged by the neck) were surely written by the Clerk of the Crown or by the prosecuting counsel, and I should think the presumption was that they were written immediately after the verdict. They are neither signed, nor dated, so far as I could observe.

I do not suppose that the Judges would write the words in such a place, and we know, indeed, that what they did was to sign the calendar, *i.e.*, the list of all the sentences passed at the Session.

In the *interim* between the verdict and the execution, Farrer did what he could for his client by moving in arrest of judgment, by filing a petition of appeal, and by trying to get the jury to recommend the prisoner to mercy.

The circumstances of this last attempt are very remarkable. Farrer first applied to the foreman, Mr. Robinson, but that gentleman, in reply, begged Mr. Farrer to reflect on the nature of a British jurymen's oath, and said that the opinion of the jury must have been such at the time of giving their opinion as never could with propriety be altered. He went on to say that he had every tender feeling with which the human heart could be impressed for the convict, both at and after his trial, nor would the strict requisition of a positive law that in many cases obliges a jury, in conformity to the tenor of their oath, to find a prisoner guilty, have prevented him and his brethren from recommending him to mercy had their consciences admitted such an idea. He wound up by observing that the very offering of such a petition to him to sign very much hurt his feelings, especially as it was on a subject which in his opinion no one had a right to interfere in. Mr. Robinson was not contented with relieving his feelings by this rhodomontade. He had the matter brought before the Chief Justice, who severely reprimanded Farrer when he next appeared in Court. He told him that his conduct (in trying to get the petition signed) was derogatory to his professional character, and that his duty to his client ended with the trial. One jurymen, I am glad to say, signed the petition. His name was Edward Ellerington.

Sir J. Stephen admits (I, 230) that Impey's behaviour on this occasion was wrong and harsh. But worse remains behind. We learn from Impey's letter of 20th January 1776,* to the Earl of Rochford, that Robinson did not come direct to him with his complaint. He first went to a Mr. Belli, and it was Belli who sent on the correspondence to the Chief Justice. He did so with an introductory note in the following terms:— “Mr. Belli presents his respects to Sir Elijah Impey, and at Mr. Robinson's request encloses him a second address from Mr. Farrer to Mr. Robinson, with Mr. Robinson's reply to it—the word victim in Mr. Farrer's address is very remarkable. This business gives Mr. Robinson much uneasiness; and he hopes Sir Elijah will permit him to make a complaint to him, if Mr. Farrer persists in his solicitations.” The important question then arises, who was Mr. Belli? The answer is, that he was Hastings' private secretary and a member of his household! Apparently he came with Hastings from Madras, for we find him attesting in 1772 Hastings' covenant. But at all events he was in Hastings' employment from 1772, for Hastings said in December 1776, that Belli had then been a private dependant of his for more than four years. On 5th January 1775, we find him writing to Goring in the capacity of Hastings' secretary. The occasion was somewhat remarkable as tending to show that Hastings had then begun to side with the Judges. One Didaru had obtained a decree in the Revenue Court for the possession of a house and took out execution. Kachlu Bibi, the defendant, complained to Lemaistre, and he, it was said, ordered that the house should be restored to her. The Calcutta Committee of Revenue asked the Governor how they should proceed, and in reply Belli wrote:—“The Governor further

* (Published in Report on Touchet's petition, references to general Appendix No. 3.)

Impey in his letter sinks the fact of Farrer being Nanda Kumar's counsel, and writes of him as the Company's advocate, his object being to insinuate that it was the majority who had set him on to interfere with the Court.

directs me to acquaint you for your present guidance that you are not to controvert the authority which the Supreme Court of Judicature may think fit to exercise." (Bengal App., p. 581.) The fullest reference, however, to Belli is contained in the debates in Council about his agency for victualling Fort William. On 4th November 1776, Hastings brought forward his plan for victualling the fort, and Clavering drew up a minute objecting to the plan. Hastings, in December 1776, rejoined as follows: "In the opinion given by General Clavering, upon my proposal for laying up a store of provisions for the Garrison of Fort William, his usual temper has displayed itself by an attempt to vilify the plan with hard and coarse invectives. Instead of offering any objections to the propriety of it, artifice and affected zeal for the Company's prosperity, projects of private benefit, and jobs to serve a private dependant are the expressions and reasonings by which a member of this State examines the utility of a public measure. He has perhaps heard, or if he has not, I will now declare that I do mean to propose a gentleman of my own family for this trust; I mean my secretary, Mr. Belli; not because he is a private dependant whose services and fidelity for more than four years past have received no higher reward than a salary of Rs. 300 a month, but because, I think the due discharge of this trust of such importance, and so immediately my own province,* that I wish to employ in it the person on whose honour I can place the best dependence." (Minute of 2nd December 1776.) To this, Clavering made the following rejoinder: "Without the express authority of the Governor-General, I could not have ventured to suppose him capable of proposing a person to exercise so great a trust who is not in the Company's service, and still more, that this person should be his own secretary. Upon a rough calculation, I conjecture the cost of the pro-

* By the Directors' orders of 29th March 1774, the Governor-General was Commander-in-Chief of the Fortress and Garrison of Fort William. Hastings found this provision of use when Clavering tried to wrest the government from him.

visions to be furnished will not be less than three, lakhs of rupees, and consequently, the agent's commission, at 30 p. c., is Rs. 90,000." The Court of Directors, by their letter of 28th December 1778, ordered that the commission should be reduced to 20 p. c., but by that time the agency had been converted into a five years' contract! The agency and the contract given to Belli were one of the subjects of the 6th article of charge against Hastings. The case was surely a gross one, for three merchants—Croftes, Robinson, and Sullivan—had stated that 20 p. c. was a sufficient commission for the agent, but Hastings gave 30.

When the agency was converted into a contract, Francis wrote in his journal (9th August 1879): "Contracts for Dick Johnstone and Belli for five years. Oh! monstrous. I declare I will not sign them."

On 2nd September he notes: "A most impudent, rascally minute from Hastings about Belli's contract."

Mrs. Fay tells us that Hastings' character was never to desert a friend or forgive an enemy.* We have an instance of the latter characteristic in his letter of 1788 about Nanda Kumar, and the former appears in his continued solicitude for Belli. Thus, on 15th October 1783, he writes regretting that he has been obliged to accommodate a former engagement to poor Belli to make room for Mr. Dent. He consoles himself, however, with remarking that Belli had an office with which he is satisfied, though much inferior to the other (a salt-agency). Apparently the office which satisfied Belli was the Postmaster-Generalship.† (Seton-Karr's Selections from *Calcutta Gazette*, p. 4.) In

* Hastings could forgive, or at least say that he forgave those whom he had injured, though, according to Lord Macaulay, this is very rarely done, the principle being *Odisse quem laeseris*. After breaking Clavering's heart by his duplicity and subterfuges, Hastings was kind enough to write: "I in my heart forgive General Clavering for all the injuries he did me." (Gleig, III, 129.)

† My friend Dr. Busteed informs me that a John Belli was Assay Master at the Calcutta Mint in 1795. If this was the private secretary of 1775, he must have been a regular *Graeculus esuriens*. It probably was, for

a letter of 10th November 1780, Hastings joins Belli with Elliot, Bogle, Sumner, and D'Oyley, as all "men of eminent merit, and universally respected, but unfortunately known to have attached themselves to me."

A great deal of unnecessary sympathy seems to have been expended on Belli by his friends. Price also calls him "poor Belli," and after telling his readers in his "Observations on Macintosh's Travels" that nothing hurts Hastings so much as to be asked by his friends for contracts (!), he says: "Poor Mr. Belli (a private secretary to the Governor-General) was urged on by a young man who wrote under him in the office to get in proposals for a contract, and obtained one; whilst the young man lived and managed the business, ruin was kept at a distance; but no sooner was he dead than Mr. Belli discovered his mistake: the contract is now held by some one else; and he, poor man, has retired in a state of bankruptcy, with a ruined constitution and a broken heart, to Chittagong to pine out the remainder of his life" (p. 89). Happy Belli, to have the sympathy of a Hastings and a Price! But if the latter's account be correct, what becomes of Belli's special qualifications for so important a trust?

These extracts abundantly prove Belli's connection with Hastings, and his letter to Impey shows at the very least that Hastings' friend and protégé was exerting himself to thwart the endeavour to have Nanda Kumar resoled. But

we know from Hastings' trial that Belli returned to India during the progress of it, and so could not be examined. He was made a Company's servant by a letter of the Court of Directors, dated 22nd December 1778, and married a Miss Stuart at Lucknow in 1781. (Dr. Busteed.) "Mr. Belli came to England in 1785, and continued some years, to be examined as a witness, but the Managers not choosing to call him, and Mr. Hastings unwilling to detain him longer at a manifest inconvenience, he returned in the year 1793 to Bengal. He had remained beyond the period prescribed by law, and it was necessary that he should be reappointed to the service by a vote of three-fourths of the Directors and three-fourths of the Proprietors. He had the pleasure and satisfaction, however, of being unanimously re-appointed by both these respectable bodies." (Thurlow's Speech in the Debates in the House of Lords on Hastings' Trial, p. 271.)

I think that they prove more than this. I think it is impossible to doubt that Belli went to Impey with Hastings' knowledge, if not by his express order. Belli in himself was nobody. He was not even a Company's servant, and was a hanger-on on Hastings. It cannot be supposed that Robinson would go to him and solicit his intervention, unless he regarded him as the mouthpiece of the Governor. Robinson's own position was much superior to Belli's. He was a leading merchant, and had been Mayor of Calcutta. He had, also at one time, been in the Company's service, and he was, according to Price, a private friend of Hastings. I hold, therefore, that he went to Belli simply because he was the private secretary. It is noticeable that the words of Belli's letter imply either that he had written once before to Impey and sent him Farrer's first address, or that Robinson had gone himself to Impey, and that this not being effectual he now had recourse to Belli. I leave my readers to form their own conclusions from the affair, but I must express my own opinion that Belli went to Impey at the orders of Hastings. It will be remembered that Hastings only denied that he had taken any part in the prosecution of Nanda Kumar, and that such a denial would not cover the case of an interference after the prosecution was closed. Indeed, Hastings' denial was made in July, and Belli's letter was written on 1st August. "He repeated his denial on 15th September, but he only said, "I have declared on oath before the Supreme Court of India that I neither defended nor encouraged the prosecution of Maharaja Nanda Kumar. It would have ill-become the first Magistrate in the Settlement to have employed his influence either to persuade or dissuade it." This does not deny a use of his influence after the trial to prevent a respite. Observe, too, that Hastings admits that he had influence and could have exerted it.

Finally, I would observe that this is a case in which one cannot exculpate both Hastings and Impey. If he chooses to believe that Belli was merely a private individual, and wrote of his own motion and without any communication with

Hastings, then Impey's conduct in receiving and acting on the letter was very improper. It is conceivable that the Chief Justice might, in an executive matter and after the trial had closed, receive a letter from the Governor, but it is difficult to see what excuse there could be for his receiving one from an obscure individual like Belli, who, unless he wrote as Hastings' secretary, had no *locus standi* whatever.

Sir J. Stephen asserts (I. 237) that no one showed the smallest sympathy with Nanda Kumar, and that the only petition which appears to have been presented was one by Radha Charan, his son-in-law. These are positive statements, and he is still more positive in censuring Macaulay for speaking of Impey's refusal to respite Nanda Kumar (II, 64 note). He says: "A refusal implies a request. Lord Macaulay would have been puzzled to answer the question, who asked for a respite? I believe that no one did so, and it makes a great difference." No doubt Macaulay would have been puzzled to reply if he had not based his statement upon some more stable authority than his own opinion. Probably he had consulted the Bengal Appendix (no very inaccessible book), and had there found the petition for Nanda Kumar's respite presented by the Nawab of Bengal, Mubarak-ad-Daula. It was presented to the Council, and was forwarded by Hastings and the other Councillors to Impey. The date given is 27th June 1775, but the copy of the Persian petition, which I have received through the kindness of Mr. B. L. Gupta, is dated 16th Rabi-as-Sani, which corresponds to 21st June 1775. Further, I am able to state that Impey was angry with the Nawab for making the petition, and wrote to him telling him that he was wrong to write to the Council, as it had nothing to do with the Supreme Court. In reply, the Nawab wrote on 11th July, excusing himself. Sir J. Stephen is very severe on the majority of the Council for not interfering to save Nanda Kumar's life. He says that on 1st August they had it in their power to do so by simply voting, in their capacity of a majority of the Council, to send to the Judges the letter which Farrer had drawn; and that if

they at that time believed that Nanda Kumar was innocent, and on the point of being judicially murdered, they made themselves accomplices in the murder. He also says that if the Council had written to the Judges that Nanda Kumar had charged Hastings with corruption, and that it was of the highest importance that the charges should be investigated, and that Nanda Kumar's execution would prevent this, the Judges must have granted a reprieve. Francis had explained that the majority did not apply to the Court, because the latter had told them that it was unconstitutional to address them by letter. Sir J. Stephen is very wroth with this explanation, and says : "Francis, must either have overlooked or wilfully refused to notice the broad distinction between writing a letter to the Court on a matter judicially before them, and writing on a matter in which they had to exercise an executive discretion. The latter is as natural and proper as the former is unconstitutional. The Home Secretary in England constantly corresponds with individual Judges as to applications for pardons. He would never dream of writing to a Judge as to the exercise of his judicial duties." (I, 236.)

It appears to me that Sir J. Stephen has here overlooked a broad distinction. The Home Secretary represents the Sovereign, and so can correspond with Judges about pardons, which fall within the Sovereign's prerogative. But Impey and his brethren were far from admitting that the Council represented the Sovereign. In their eyes, the Councillors were only servants of the East India Company,* and it was the Judges who represented the King. The majority did try to interfere in an executive matter, by asking the Chief Justice to mitigate the rigour of Nanda Kumar's imprisonment. With this view they sent Nanda Kumar's petition to him. Impey requested them to instruct Nanda Kumar to present his petitions in future direct to the Judges. In reply, the Councillors

* In a letter of 2nd August 1775, to the Court of Directors, the Judges speak of the Members of Council as "your servants."

said: "We cannot refuse to receive any petitions presented to us, and if they relate to the administration of justice, we conceive we are bound by our duty to communicate them to the Judges." On 30th May, Impey rejoined as follows: "As to communicating petitions to the Judges, I apprehend that no Board, even of the highest authority, in England could refer any matter either to a Court of Justice or to any Judge thereof otherwise than by suit lawfully instituted." Impey's view was affirmed by all the Judges on 23rd June in connection with Radha Charan's case.

Sir James Stephen (as has been already said) remarks that the only petition shown to have been presented was one by Nanda Kumar's son-in-law, Radha Charan. This is misleading. It is true that the petition was presented by Radha Charan, but it was not his own but that of the Nawab of Bengal, as whose vakil he presented it. The petition was received on 27th June, and was as follows:—

"If several transactions of former times are to be tried by the Act lately transmitted from the King of Great Britain, it will occasion trouble and ruin to the inhabitants of this country. The affair of Maharaja Nanda Kumar, which is now before the Court, is really hard and rigorous. For should the crime of which he is accused be proved against him in the said Court, the custom of this country does not make it deserving of capital punishment; nor, as I am informed, was life formerly forfeited for it in your own country; this has only been common for a few years past. The Maharaja has transacted affairs of the greatest importance. When Mir Qasim Ali had taken the resolution to ruin and expel the English, the Maharaja in particular exerted himself to the utmost with my father in supplying them with grain and money for the use of their troops.

"The services of the Maharaja on this occasion are well-known to the King of Hindustan; certainly he never could have committed so contemptible a crime; people employed in important affairs will undoubtedly have many enemies, and those who have been active in the affair of Nanda Kumar,

have long been his declared foes. Taking, therefore, into consideration the welfare of the people, I beg in particular, with regard to this affair, that the Raja's execution may be suspended till the pleasure of His Majesty the King of England shall be known." Resolved that a copy of this translation be transmitted with the following letter to the Chief Justice and Judges of the Supreme Court of Judicature :—

"Gentlemen,—We have this instant received a letter from His Excellency the Nawab* Mubarak-ad-Daula Mu-attaman al Mulk Firoz Jang Bahadur, through the hands of Rai Radha Charan, his public vakil, containing an intercession on behalf of Maharaja Nanda Kumar; we conceive it to be regular on our part to transmit it to you, and of which we shall inform the Nawab." This letter was signed by Hastings as well as by the rest of the Council, though, of course, this does not show that he approved of it. The Judges never answered this letter, so far as I know, and the following remarks show conclusively, I think, that they did not. In the course of the inquiry about Rai Radha Charan, Impey said on 6th July 1775: "I cannot help observing a small circumstance. I have, since the claim made by the Council for Rai Radha Charan, received two letters from the Nawab directed to myself, and one original letter from him, directed to the Governor-General and Council, inclosed in a letter from them to the Court. *Though improper, we took no notice of that letter.* I had before received letters from him; they had the usual alqâb,† the same that is given to the first in Council. The letters to me since the dispute, to give him a higher air of consequence, make the alqâb much inferior. The same artifice is made use of in that sent to the Governor-General and Council. The alqâb sent to the Governor-General and Council is infinitely inferior to that formerly sent to the first in Council and myself. They best know whether at any other period they would have admitted a letter from him with that alqâb. They best know whether they in future are to be

* "The blessed of the State, the trustee of the country, kindling in war.

† Alqâb is the Arabic plural of laqâb, and means titles or form of address.

treated with the same inferiority. This observation will not be so striking to those who are not conversant with the customs and ideas of the natives; and do not know how tenacious they are of that address."*

I think it cannot be doubted that the following letter from the Nawab refers to what Impey had written to him about his application in Nanda Kumar's behalf. The original was procured for me from the Nawab's palace by the kindness of Mr. Gupta, and I am indebted to the Hon'ble Syed Amir Hoosein for a translation of it :—

Copy of a letter of Nawab Mubarak-ad-Daula Bahadur, Nawab Nazim of Bengal, Behar, and Orissa, to Sir Elijah Impey, Chief Justice. Dated the 6th Jamadi-al-awal 17 Jalus (11th July 1775).

" Your letter in reply to mine has been received, and has pleased me much. It was stated therein that what was written about the trial of Maharaja Nanda Kumar has caused much surprise, for the officers of the Court of Justice do not hear the advice and accept the counsel of any other persons in such matters ; and that there is no truth in what I have heard that the Members of the Council have been written to with regard to this matter, because there is very great

* Sir J. Stephen's statement that nobody sympathised with Nanda Kumar, is contradicted by the evidence of Mr. Farrer in 1781, who deposed that the execution caused general terror and dismay. This, too, was proved by the evidence of Major Rennel, Captain Coyne, Messrs. Mills, Baber, Goring, and Captain Price. Farrer said, in his evidence in 1788, that there was a petition by Sambhu Nath Rai, Nanda Kumar's brother, and that this was the first time he ever heard that Nanda Kumar had a brother. From a *kursi-nama* prepared for me in Murshidabad, I find that Sambhu Nath was the cousin of Nanda Kumar, being the son of Raghu Nath, the half-brother of Padma Labh, the father of Nanda Kumar. It is worth noting that when Hastings enumerated, in his Benares Narrative, p. 8, the crimes of Chait Singh, he dwelt on the fact that he had, in June 1777 sent a man named Sambhu Nath with an express commission to Clavering. Thornton justly refers to this as an instance of the implacable and revengeful nature of Hastings. It is probable that this Sambhu Nath was the cousin of Nanda Kumar, for it is a family tradition that the cousin was in Chait Singh's service. Here, then, we have another instance of the *eternum servans sub pootore vulnus*. That Chait Singh should send an ambassador to Clavering was very bad, but that he should employ a relative of the detested Nanda Kumar on the work was as vinegar upon nitre.

difference between the business of the Council and of the Court of Justice, and there is no connection between the two. Let the past be past. It would not be advisable to write about this matter again, for its repetition will cause displeasure to the officers of the Court of Justice. In all other matters, whatever has to be written should be written to the officer of the Court of Justice. It has been stated that the language of the letter which has been written, and the complimentary terms used in it, were, in comparison to those of the former letters, entirely unsuitable.

"Sir, what you have been pleased to write has been carefully perused. It ought to be mentioned, however, that, as the said Maharaja during the lifetime of my deceased father served the English Company faithfully, and was never lacking in his efforts to promote their interests and peace, you were put to the trouble of considering a representation in his favour. For I and all the people of this country look up to you, gentlemen, for justice, and it is to you, gentlemen, to whom every person comes to submit an appeal. However, if this has caused displeasure, you will be pleased to forgive it. With regard to epistolary language and complimentary terms this well-wisher will always be pleased to exalt your dignity."

In his defence on his impeachment Impey declared that he had no recollection of Mubarak-ad-Daula's petition, but said that even if it had been made, he had no right to interfere in judicial proceedings in Calcutta.

Impey also said that if the majority of the Council had made a representation to the Judges that there were probable grounds for the accusation of Hastings, and shown those grounds, there could be no doubt that the Judges would have respited Nanda Kumar.

Sir J. Stephen (I, 232) says that he believes this defence to be quite true!

I cannot think that Sir J. Stephen would have said this had he known of Mubarak-ad-Daula's letter and of the way in which the Judges treated it. Mubarak sent his letter of intercession through the Council, and the latter forwarded it without a word of comment. Even this formal act, however, was censured by the Judges, who said that it was improper, and took credit to themselves for not having animadverted on it

How then would they have received a letter from the majority only (for of course Hastings would not have signed), entering into argument and setting forth reasons for respiting Nanda Kumar? Certainly they would have treated it as a contempt of Court, especially when Impey had, on 30th May, declared *apropos* of an executive matter that no Board could communicate with a Court of Justice otherwise than by suit.

Further, it is clear from the Nawab's letter of 11 July that Impey censured him for writing to or through the Council. He told him that "the officers of the Court of Justice did not hear the advice and accept the counsel of any other persons in such matters," and then he rated him for not addressing him in proper style, which clearly shows that it was the letter about Nanda Kumar that Impey was referring to on 6th July.

Impey stated in a pamphlet (Impey's Memoirs, p. 335) that no application was made in favour of Nuncomar by the Council *after* his conviction.

This was either a mistake of Impey, or it was a falsehood, or at least a subterfuge. Mubarak-ad-Daula's application for a respite was certainly forwarded by the Council after the conviction, and though the Judges were too indignant to answer it, Impey's letter to Mubarak shows how he regarded it. The Council would have met with a warmer rebuff than mere silence had their letter expressed any sympathy with Mubarak's letter.

Nanda Kumar having been hanged, the next thing to be done was to justify the act in England. For this purpose Alexander Elliot, who had acted as interpreter during the trial, was forthwith sent home entrusted with the publication of the trial. Elliot was secretary to the *khalsa* (the exchequer or revenue-office), and Hastings' permission was necessary for his departure. Hastings gave it and took part in sending him—another link in the chain of evidence connecting him with Nanda Kumar's case.

"I wish," he writes to Macleane (Gleig, II, 48), "I had early received and followed the advice of Sir Gilbert Elliot. I am afraid I have too often furnished the majority with arms against myself by observing a contrary rule. No part of your

letter has given me so much pleasure as the information of his disposition towards me. It will have prepared him to receive with greater approbation the event of his son's return, I shall never forgive myself for having consented to it, if he is displeased with it; and yet I am sure that it was placing my friend Elliot in a point of view so conspicuous, that perhaps another opportunity might not have occurred in the course of his life to make his abilities equally known to the public, nor equally useful. But I will not entertain a doubt on the subject. It was a laudable measure; it will be received as such, and it will prove successful in every way." In a letter of 25th June 1776 (Gleig, II, 68), Macleane writes that Elliot has been ill, and that he really believes chagrin at the little service he was able to do Hastings with Lord North had had some share in his illness. He goes on: "Sir Elijah Impey will expect a letter from me. Be good enough to assure him that I watch over his cause with the same unremitting *zeal* and *care* as over yours. Intentions were very hostile to him at first. He is, I am pretty certain, in no danger. *Magna est lex et prævalebit.*"*

In connection with this the following letter of Impey should be read. It was written on 8th August 1775, and addressed, I believe, to Elliot. I found it among the Hastings' papers in the British Museum:—

"I am apprehensive that the majority of the Council will endeavour to assign undue motives for the late execution.†

* Apparently Macleane could be sarcastic. The substitution of *lex* for *veritas* is significant.

† These words and the fact that the Judges employed Elliot to print the trial are sufficient to disprove Sir J. Stephen's audacious assertion (I, 230) that no one at the time showed the very least disapproval of the conduct of the Judges. Impey knew better than this. He said in his speech that the accusation was made in despatches and letters sent to England in 1775, and that the Judges heard of the calumny a year afterwards. On 20th January 1776, we find him writing a long letter of defence with reference to these despatches, he having received secret copies of the minutes of the Council from his friend Hastings. Impey bound himself by an oath not to divulge the minutes in Calcutta. Strange that

There are two points I am much solicitous about; one that I may be defended from any imputation laid on me for acting from partiality or factiously. I would by no means have my friendship to Mr. Hastings be denied or extenuated. It was founded on friendship for a school-fellow, and has been confirmed by opinion of the man. The other, that the disputes which have been between the Council and the Court may be rightly understood. I wish my friends to be furnished with extracts of all consultations in which we are named or alluded to, from the 4th May till the present time, and that the letter which I sent back may not be forgot.* I shall think it unjust if, acting as I have done from conscientious motives, I should be recalled from a station to which I have sacrificed no very bad views in England. We miss you already." It was probably in answer to this letter that Elliot wrote from Khejiri a letter which Sir Richard Sutton read to the House of Commons.

Hastings when breaking his own oath should take one from another man. The phrase "legal murder" was attributed to Lord Mansfield in a letter written 1st December 1780, from Calcutta.

* This refers to a letter of 16th June, addressed by the Board to Impey, and returned by him on the ground that it should have been addressed to all the Judges.

CHAPTER XV.

RECAPITULATION.

I HAVE now given an account of the trials of Nanda Kumar for conspiracy and forgery, and I have criticised at length the recent work of Sir J. Stephen, "The Story of Nuncomar."

I set out by saying that I should endeavour to establish nine points, and I now proceed to gather up the evidence I have adduced in proof of each.

1. *That the jewels-bond—Exhibit A of the trial—was not a forgery, but was the genuine deed of Bolaqi Das Seth.*

The evidence on this point may be taken together with that on my seventh proposition, viz:—*That the prosecution entirely failed to prove that the bond was a forgery.*

I do not think that I need spend many words in showing that this last point is established. Sir J. Stephen admits that the case against Nanda Kumar was a weak one. He describes it as being little more than a *prima facie* case, and says that Nanda Kumar was convicted from his own want of judgment, and from the effect produced on the jury by the mass of perjury put forward in his defence. For an Indian case, this is tantamount to an admission that the prisoner should have been acquitted. It has long been a maxim with Indian tribunals that prisoners should not be convicted because they set up false defences. Thus, when a Sessions Judge had argued for a conviction from the futility of the defence, the Calcutta Nizamat Adalat observed in 1851, that "attention should always, chiefly and carefully, be directed to the goodness of the evidence for the prosecution; because if the charge be not fully and satisfactorily established, it signifies little how worthless soever the defence may be. In this country persons charged with offences, supported by good or bad proof, never trust to their innocence."

Impey was so ignorant or regardless of this fact, that he told the jury to convict if they did not believe the defence; his words were, and it is important to remember that they were uttered just at the closing of the charge—"The nature of the defence is such, that if it is not believed, it must prove fatal to the party, for if you do not believe it, you determine that it is supported by perjury, and that of an aggravated kind, as it attempts to fix perjury and subornation of perjury on the prosecutor and his witnesses." Even Sir J. Stephen admits that Impey was wrong here, and says, "I think this goes too far. To bolster up a good case by perjury is not an uncommon thing in India." Moreover, the grounds on which Sir Elijah Impey, and Sir J. Stephen after him, held that the defence was false and supported by perjury, will not stand examination. Mir Asad Ali was, in all probability, a truthful witness, and it is certain that he was not proved to be a perjurer. He was acquitted when he was afterwards tried for perjury, and I have shown that the reasons given by Sir J. Stephen for doubting the genuineness of the receipt he produced, are altogether worthless. He produced a receipt given by Bolaqi for money brought from Rohtas, and I have shown that Mir Qasim was in possession of Rohtas in September 1764; that he had his treasure there, and that Mir Asad was a man of position, and employed at Rohtas at about the date of the receipt. Besides this, why should the defence have undergone the trouble and risk of forging an impression of Bolaqi's seal on a receipt, when the prosecution gave no evidence whatever that the impression on the bond was a forgery? Mohan Prasad never said that the impression on the bond was not a genuine impression, or that it did not resemble a genuine impression. Still less did he or any other witness endeavour to prove that it was unlike the impression of the genuine seal. Presumably Bolaqi's seal was in the hands of his executor, and certainly he and Mohan Prasad must have had papers bearing impressions of the genuine seal. Yet they never produced them, or offered to do so. It would almost appear, too, that it was not the case for the prosecution that

the impression on the bond was made from a forged seal. Their contention seems rather to have been that the genuine seal was fraudulently applied to the bond through the connivance of Padma Mohan.

This may be inferred from Farrer's question in cross-examination to Mohan Prasad : " Tell at what time you first suspected that the seal of Bolaqi Das was improperly made use of " ? A little further on he asks, " Did you see upon the face of the bond anything to make you suspect it ? " *Answer*— " It was not signed by Bolaqi Das, and I knew that Silavat was dead a year and-a-half before." There is not a word here about the impression being suspicious. By signing, Mohan Prasad did not mean sealing, for he had previously deposed, in his examination-in-chief, that Bolaqi always put his sign-manual to a bond, and that he never heard of his putting his seal to obligatory papers. He added, " Sarrafs in Calcutta sign a bond and do not fix any seal."

Thus we see clearly that Mohan Prasad impugned the bond, not because he considered the impression of the seal to be a forgery, but because it was not *signed* by Bolaqi. It is evident, too, how hard pressed he was to give any intelligible reasons for believing the bond to be a forgery. Silavat's death in 1768 or 1769 was no reason why he should not have witnessed a bond in 1765, and as Bolaqi was not a Calcutta merchant, the argument from trade-customs, even if it were true, was quite irrelevant. We have it also on the authority of Maharaja Naba Krishna, a chief witness for the prosecution, that in transactions between parties, one of whom knew Nagari, and the other Persian and Bengali, a seal might be sufficient. The case under consideration was such a transaction, for Bolaqi was an up-countryman, and kept his accounts in Nagari, and Nanda Kumar was a Bengali, but was acquainted with Persian, and always signed in that language. In fact, the prosecution was obliged to admit that a seal might be sufficient in very important transactions, for they relied upon Nanda Kumar's receipt to prove the publication of the bond, and this was authenticated only by his seal. The negative argument for

the falsity of the bond which is derived from the fact that it is not mentioned in the power-of-attorney executed by Bolaqi in 1769 is admittedly of no great weight. The power was not prepared by Bolaqi, or in his presence. It was prepared in Calcutta, while he was at Chandernagore, and it was carried to him there for signature. The list of debits and credits given in the power has this saving clause appended to it: "This is wrote by guess; and, besides this, whatever may appear from my papers is true debts and credits." The list of credits is headed by the entry "the English Company at the Dacca Factory," but the amount of this claim is not set down, and it may be fairly argued that this omission might be a reason for not entering the debt to Nanda Kumar, as the payment of it was conditional on the receipt of the money from the Company. It may also be fairly said that the omission to put down the amount of the Company's debt shows that Kista Jiban, who prepared the paper, was not fully cognisant of all his master's business. It is, of course, impossible for us to understand fully a transaction which took place more than a hundred years ago, concerning which we have not all the papers, but it is possible that the amount of the bond to Nanda Kumar may be included in the darbar expenses which the power enjoins Mohan Prasad and Padma Mohan to pay. It may even be the case that though Bolaqi executed the jewels-bond, there was, in fact, no such deposit of jewels as is mentioned in it. It may be that the bond was merely the way Bolaqi took of promising Nanda Kumar a douceur if he recovered the Company's money for him. This is a suggestion which has been made to me by a Maimansingh pleader, Babu Keshab Chandra Acharje, and it is at least a possible hypothesis.

But the strongest argument to rebut that drawn from the silence of the power-of-attorney is this, that the power was in the hands of Ganga Vishnu and Padma Mohan, and that notwithstanding its silence and the fact deposed to by Mohan Prasad, that he drew Ganga Vishnu's attention to the silence of the power-of-attorney, yet these two men paid Nanda Kumar his money, and no action was taken against him till

some two years afterwards. Why should we suppose that the executor, Ganga Vishnu, committed so fraudulent and suicidal an act as to pay away the largest portion of his uncle's property without cause? Or why should Padma Mohan deprive himself of the ten per cent. on the Company's debt, which Bolaqi left him in his will, if the bond to Nanda Kumar was not genuine? Sabut Pathak and Naba Krishna* deposed that the alleged signature of Silavat on the bond did not appear to be genuine, but the latter did not speak positively, and even if we allow that their opinion was sincere, it is entitled to little weight. Kamáladdin denied that he was a witness to the bond, but this was also denied by the defence. Kamáladdin's story that his name was formerly Mahomed Kamál, and that the seal on the bond was his, was far from being satisfactorily proved. I do not find that the letter produced by Kamáladdin, and which he said was written to him by Nanda Kumar, was proved to be Nanda Kumar's. Farrer denied that he had ever used the words attributed to him in the report. "I admit the Maharaja had the letter;" but even if he had said so, this only meant that Nanda Kumar had a letter from Kamál, and not that he had written the letter to Mahomed Kamál, which was produced in Court.

It is clear that Kamáladdin was a man of worthless character, and one whom nobody could believe. Sir J. Stephen calls him "a very poor creature, and I have shown that he was disbelieved by the Council in December 1774, and by the jury in the conspiracy case brought by Hastings. In Barwell's case there was a conviction, but probably this was, as Sir J. Stephen conjectures, because the jury thought that Fowke's accusation of Barwell, at the preliminary examination, corroborated Kamál's evidence as to the extortion

* Sir J. Stephen remarks that Naba Krishna was not cross-examined, but it appears from the recognisances of 7th May, that neither he nor Sabut was examined at the preliminary inquiry on 6th May. Nanda Kumar's counsel may therefore have been taken by surprise. Gharib Pathak, the father of Sabut, gave evidence, but broke down, and then I suppose the prosecution thought of calling in the son.

of the *fard*. Where, as in Hastings' case, Kamál's evidence was not corroborated, there was an acquittal. Kamál's character may be judged of from his own admission that he had drawn out two false petitions. His words are: "I said to Radha Charan, do you take these two *arzis* in deposit; I don't deliver them in as complaints; was I to complain, I would complain of what is true. In order to frighten him, I have wrote what pleased myself" Sir J. Stephen has a curious comment on this and other admissions of Kamáladdin. He says that there is a kind of simple-minded faith in these frank statements, which is not without its weight; that the state of mind in which a man considers common falsehood as fair play, but looks on perjury with horror, is more intelligible than rational, and that many of Kamál's answers give a good illustration of what the current native view at that time was, and he believes still is, as to falsehood as distinguished from perjury. Thus, then, we have an admission from Sir J. Stephen that the principal witness for the prosecution in the forgery case was a man who considered falsehood as fair play. I do not know where he got his notion that natives make a great distinction between falsehood and perjury. This view is contrary to that of the Government of India, which abolished oaths in 1840, as being obstructions to justice, and I believe it is opposed to the experience of most persons who have held judicial office in Bengal.*

Even granting that Kamál's evidence was true, and that the alleged writing of Silavat was not genuine, it does not follow that the bond was a forgery. The attestations might have been forged to a genuine bond. What, however, is to my mind the most conclusive argument against the truth of the case for the prosecution, is the fact that it was chiefly sup-

* Sir J. Stephen has a great dislike to eloquence or passion. Destitute of these qualities himself, he has only contempt for those who are more richly endowed. To him the peroration of Sir Gilbert Elliot's speech savours only of mouldy wedding cake, but I think that even mouldy wedding cake would have been better pabulum for his readers, than such Dead Sea apples as this statement about the native view of falsehood and perjury.

ported by witnesses who were not cited, far less examined, in the Civil Court. If Kamál's evidence were true, can it be believed for a moment that Ganga Vishnu would not have examined him in the civil suit? He could not have been ignorant of what Kamál could say, for his agent, Mohan Prasad, knew, in 1772, that Kamál denied having witnessed the bond.

As I have already said, the strongest proof that the bond was genuine, is the fact that the executor paid it, and then remained silent for a lengthened period. I also see no reason to doubt that the bond was witnessed by Mahtab Rai. The prosecution failed to show that Mahtab Rai's seal was a forgery, or that such a person had never existed; and, on the other hand, Taj Rai, his brother, and Rup Narain Chaudhari proved that there had been such a man, and that he was dead. Four witnesses deposed to the execution of the bond, and to Mahomed Kamál's being distinct from Kamáladdin. It may be that the defence was driven by the iniquity of a stale prosecution into fabricating false evidence by bringing forward men who were not really present when the bond was drawn up. This is possible, and would be in accordance with Sir J. Stephen's remark about good cases being sometimes bolstered up in India by perjury, I therefore do not lay stress on the evidence of the four alleged eye-witnesses, but at the same time there is no particular reason for discrediting them. The contradictions said by Sir J. Stephen to occur in their depositions do not exist, as he would have discovered if he had read the trial more carefully. Sir J. Stephen thinks that the terms of the bond are suspicious, but this is a mistake arising out of his erroneous impression that Bolaqi's money was in Company's bonds. If this had been the case, the reference to the Company's cash at Dacca might have seemed extraordinary, but in fact there were no bonds till the money came to be paid. The money had been taken at Dacca, and so the reference to Dacca was quite natural. And if, as the bond recites, the jewels were deposited with Bolaqi to sell, there was nothing harsh or unusual in Nanda Kumar's requiring him to pay their value

seven years afterwards. Bolaqi's house may have been plundered in 1764, but he ought to have sold the jewels long before and have paid Nanda Kumar the proceeds. There is nothing suspicious in the fact of a deposit of jewels with Bolaqi. Such transactions are common in India—*e.g.*, we know from a letter of Bolaqi to Vansittart, that the jewels of Mir Jafar had at one time been deposited with him.*

2. *That no attempt was made to prosecute Nanda Kumar before May 1775.* It was on Saturday, the 6th May, that Mohan Prasad gave his evidence, and that Nanda Kumar was thrown into jail, and I maintain that no overt step was taken to prosecute him until then. No doubt there were communings and plottings between Hastings and Mohan Prasad for months before, but nothing public was done till May. The story that Driver recommended Mohan Prasad to prosecute in March 1774, and that he accordingly applied to the Mayor's Court for the original papers, is contradicted by Driver's own petition. We there see that Ganga Vishnu, and not Mohan Prasad, was then his client, and that he asked for the papers, because he had commenced suits in the Diwani Adalat, and wanted the bonds, receipts, and other vouchers in order to establish the same. Sir Elijah Impey never ventured to say that this application of Driver had anything to do with a contemplated criminal prosecution. On the contrary, he said before the House of Commons, that he had no evidence to prove that the endeavouring to procure the papers from the Mayor's Court was intended as a stop towards a criminal prosecution. Mohan Prasad did not say in his evidence, nor did Impey say in his charge, that there had been an attempt to prosecute in 1774. What Impey said to the jury was: “ You have heard when the papers were delivered out of the Court; if there has been any designed delay, and if you think Mohan Prasad had it in his power to carry on an effectual prosecution before he has, it is a great hardship to Maharaja Nanda Kumar, especially as the witnesses to the bond are all

* App. 81 to Report of Select Committee of 1772.

dead, and you ought to consider this among other circumstances which are in his favour." And then he adds what seems to me to be either a cruel sneer, or a very inept remark,—“though, to be sure, this hardship is much diminished, as there are so many witnesses still alive who were present at the execution of it.”

Again, in his defence before the House of Commons, Impey argued that the fact that Hastings had released Nanda Kumar after Palk had put him into confinement, was sufficient to prevent any native from prosecuting Nanda Kumar, as the only Criminal Court to resort to was that in which Hastings presided. He also mentioned the difficulty about obtaining the papers, but he did not say that Mohan Prasad tried to get them in 1774 in order to prosecute Nanda Kumar.*

The Court of Kachahri, over which Palk presided, was subordinate to the Governor and Council, to whom appeals lay from Palk's decisions. Hastings was therefore probably within his right in releasing Nanda Kumar, and at all events such action on his part could not frighten away a native from bringing a charge of forgery, any more than it frightened Ganga Vishnu from going on with the civil suit. It is also, I think, absurd to say that the papers could not have been got out of the Mayor's Court. A Criminal Court could certainly have compelled their production; and if Mohan Prasad or Ganga Vishnu had really wanted to prosecute Nanda Kumar criminally, and had tried in vain to get the papers from the Mayor's Court, they could have appealed

* Here I have to acknowledge that I did Impey an injustice in my first article in *The Calcutta Review*, in saying that he had asserted that Palk had confined Nanda Kumar for forgery. I see now that he simply says that Palk had confined him, and this is quite true. It would have been more candid if he had said that the confinement was for contempt, for certainly the impression conveyed by his language is, that the confinement was for the forgery, and this is how he has been understood by Sir J. Stephen. I suppose that he left the point obscure, because if he had said that the confinement was for contempt, it would have been seen that the act of Hastings in releasing Nanda Kumar was no reason why a native might not expect justice if he prosecuted Nanda Kumar criminally.

against the order of refusal to the Court of Appeal, where Hastings presided, and to which the Mayor's Court was subordinate. Granting, however, that the papers could not be got out of the Mayor's Court, I do not see what there was in this to prevent Ganga Vishnu or Mohan Prasad from starting criminal proceedings. They could at least have put in a petition to the Criminal Court, and asked it to take cognizance of the charge, and to send for the papers. It was not as if they could not know without having possession of the original bond, whether it was a forgery or not. The paper was not missing, though it was in the Mayor's Court. They had a copy of it, and if they could get a copy, they could also inspect the original.

The original was just as much wanted for the civil suit as for a criminal prosecution, and yet the fact of its being unattainable did not prevent the institution of the civil suit. Nor does Boughton-Rous say that the impossibility of getting the bond prevented him from disposing of the civil suit. Moreover, if we grant everything that is alleged—grant that the bond could not be procured, and that no criminal prosecution could be started without it—all this will not account for the failure to prosecute before the papers went into the Mayor's Court. The executor had the bond in his possession in January 1770, and there is no evidence that it went out of his possession till 1771 or 1772.

In any case, he must have had it for months. Why did he not prosecute then? Mohan Prasad evidently felt himself pressed with this difficulty, for when the question was put to him, "Why did you not begin this prosecution sooner?" his answer was, "I had very little power in the business of the deceased. Padma Mohan Das was the master." He never said that his difficulty was that he could not get the papers out of the Mayor's Court. Supposing that he had little power in the business then, there is still no explanation of why Ganga Vishnu did not prosecute. He was not a bedridden invalid in 1770-71. He took out probate, he went to Belvedere, and he endorsed the bonds over to Nanda

Kumar. Mohan Prasad treated him as a capable man, for he showed him the papers, and he deposes that Ganga-Vishnu was one of those who was always pressing Padma Mohan Das to settle the accounts, and to deliver them over.

He instituted the civil suit, why could he not institute a criminal charge?

3. That there is strong circumstantial evidence that Hastings was the real prosecutor. This is the most interesting of all the points, and the one which calls for most elucidation. I venture to think that I have added something to the evidence against Hastings, by showing that Belli, his private secretary and a member of his family, counteracted Farrer's endeavours to obtain a respite for Nanda Kumar. I have also given some facts and arguments in corroboration of Lord Macaulay's view, that Hastings acknowledged that Impey hanged Nanda Kumar in order to support him.

The most obvious arguments to prove that Hastings was the real prosecutor are: that he was the intimate friend of the Chief Justice,* who was a man utterly without scruples, as is shown by his subsequent conduct in the *pulbandi* contracts and the Lucknow business; that there was no prosecution or attempt at a prosecution of Nanda Kumar till he had stood forth as the accuser of Hastings, and that it is impossible to believe that an English Judge would have hanged a Hindu for forgery, and that, too, on so stale and badly proved an accusation, unless he had been improperly influenced. These are all old arguments, and are those which were most dwelt upon by Hastings' contemporaries. To my mind this is greatly in their favour, for an argument must be good which strikes everybody and at once. All the special pleading in the world will not wipe out the facts that Nanda Kumar was prosecuted for forgery *after* he had charged

* Impey was connected with Barwell as well as with Hastings. He had one son called Hastings Impey and another Elijah Barwell Impey, and he became Barwell's trustee and attorney when the latter left the country, and had to leave the Bench when the case of the Company against Barwell came on for trial. *Wide Tighlman's Evidence*, App. 100B to 9th Report.

Hastings with taking bribes, and that he was hanged while his charges were still under examination.

*Sir J. Stephen admits (I, 267) that a passage which he quotes from the *Sair* proves it was the impression of the natives at the time that Hastings prosecuted Nanda Kumar, and that he was punished for having accused the Governor-General. But he says that it also proves, if proof is needed, how vague, inaccurate, and ill-informed native popular opinion is;* and he adds that he believes that the popular opinion which has been adopted by Macaulay, Merivale, and others, is nothing but a reflection of this hasty, ill-informed, and utterly ignorant native prejudice promoted without proof by the malice and slanders of Francis.

But the opinion that Hastings was the real prosecutor was not confined to natives. Let us hear "how it struck a contemporary" Englishman.

On 15th September 1775, General Clavering, an honest and plain-spoken soldier, wrote as follows :—" Mr. Hastings says it is an insult on his station to suppose that it requires courage in any man to declare openly against his administration. After the prosecution so obstinately conducted against Mr. Fowke until a verdict could be obtained against him, notwithstanding he had been honorably acquitted at his first trial for the same charge, and after the death of Nanda Kumar; the Governor, we believe, is well assured that no man who regards his own safety will venture to stand forth as his accuser."

" On a subject of this delicate nature (Nanda Kumar's trial) it becomes us to leave every honest and impartial man to his own reflections. It ought to be made known, however, to the English nation that the forgery of which the Rajah was

* It seems rather hard that the mistakes of a Bihari Mahomedan, ignorant of English, and writing a hundred years ago, and probably at a distance from Calcutta, on the subject of English law and procedure, should be made a peg on which to hang depreciating remarks on native opinion at the present day !

accused must have been committed several years ago ; that in the *interim* he had been protected and employed* by Mr. Hastings ; that his son was appointed to one of the first offices in the Nabob's household with a salary of one lac of rupees ; and that the accusation, which ended in his destruction, was not produced until he came forward and brought a specific charge against the Governor of corruption in his office.

"If Mr. Hastings had been careful of his own honour, we think he would not have appeared himself as the prosecutor of his accuser, and that he would have exerted his influence with Mohan Prasad to suspend the other prosecution until he had proved the falsehood of the charges brought against himself by Nanda Kumar. As things are now circumstanced, the world may perhaps conclude that this man was too formidable a witness to be suffered to appear, and that any degree of odium or suspicion which the violent measures taken to destroy him might throw on the Governor's character were not to be weighed against the danger of his proving the truth of his accusations."

It is noticeable that Hastings saw this minute and replied to it, and that he did not take the defence which his admirers afterwards made for him, that Mohan Prasad's accusation had commenced in the Mayor's Court many years before. All he said was : "I have declared on oath before the Supreme Court of Justice that I neither advised nor encouraged the prosecution of Maharaja Nanda Kumar. It would have ill become the first Magistrate in the Settlement to have employed his influence either to promote or dissuade it."

It may be said that these are the words of an enemy, but what will be said to Macpherson's words of warning to Hastings ? He was then his friend, and when he heard of the trial and condemnation of Nanda Kumar, he wrote from Madras imploring Hastings to take precautions for his safety. "Do not, he said, employ any black cook ; let your fair female friend* oversee everything you eat."

* No doubt Mrs. Imhoff, whose acquaintance Macpherson may have made when they were at Madras together.

Hastings himself knew well that people suspected him of being the prosecutor ; and on the morning of 7th May 1775, remarked to his friends that the refusal of bail by Lemaistre and Hyde would be laid to his charge.

Sir J. Stephen observes that the coincidence in point of time between Nanda Kumar's accusations and the forgery charge was by no means close, as there was an interval of nearly eight weeks between them. I think, however, that most people will admit that this was a very short interval, especially when they remember that part of it was occupied by the prosecutions for conspiracy. Nanda Kumar accused Hastings in March ; in April, Hastings, Barwell, and Vansittart were getting up the conspiracy cases ; and on 6th May, Nanda Kumar was arrested on a charge of forgery. The interval is less than that between Nanda Kumar's disgrace and his appearance as Hastings' accuser, and yet no one, and Sir J. Stephen least of all, will deny that these two things were connected.

Nanda Kumar had certainly fallen out with Hastings in March 1774, and on 11th January 1775, the final rupture took place. On that day Hastings told Nanda Kumar that he was from henceforth his enemy in India and England, and he turned him out of his house and forbade him ever to approach him again. This was an open declaration of war, and yet Nanda Kumar did not come forward to accuse Hastings till two months afterwards. Sir J. Stephen, too, is inconsistent, for after pointing out the length of time between the two events, he proceeds (less than ten pages further on) to argue that the interval was so short that Hastings could not possibly have got up the case. He says : "Nanda Kumar's attack upon Hastings was made on 13th March. All sorts of contrivance, consultation, study of native documents, and books of account in various languages and in an imperfect state would be necessary before a prosecution could be entered upon. But till April 24th, the deed alleged to be forged was in the custody of the Court with many other papers in the case. About this time they were delivered to Mohan Prasad,

and Nanda Kumar was arrested on the 6th May. How was Hastings, who was previously ignorant of the dispute, to get it up and prepare to commence proceedings in the course of ten or twelve days?" There are several mistakes in this passage. In the first place, Nanda Kumar began his attack on the 11th and not on the 13th March.

Second.—Hastings acknowledged that he was for some time before aware that Nanda Kumar was going to attack him, and alleged that he had seen his paper of accusations.* Indeed it was the circumstance that Nanda Kumar had, as Hastings believed, leagued himself with his enemies, which made Hastings give him a rebuff in October.

Third.—It does not appear that the study of native documents and books of accounts was thought necessary by Mohan Prasad's advisers, for we learn from the report of the trial, that the books were produced *in consequence of a notice from the defendant to produce them*, and that Mr. Durham, the Company's lawyer and Mohan Prasad's counsel, said that he declined making use of them, as they were in the Nagari character, and that he could not point out the entries as to which he meant to have examined Mohan Prasad. Sir J. Stephen's remark begs the question at issue. If the prosecution was a *bond fide* one, the books were necessary; but if it was a political conspiracy, the less the books were looked into, the better was the chance of the plot's being successful.

Fourth.—The interval was just as short for Mohan Prasad as for Hastings. He had not the original bond any more than Hastings, and must have decided on the prosecution in March or April, for Sir J. Stephen admits that Mohan Prasad must have been influenced in carrying on the prosecution by the events which were passing in Calcutta.

Fifth.—The statement that Hastings was previously ignorant of the dispute is opposed to fact. He was fully aware of

* In his letter of 16th May 1775, he says that it was the general report at the time, and that he believes it to be true, that when the majority arrived in the river, Fowke took down to Clavering a long list of charges which Nanda Kumar had forged.

the dispute, and was patronising Mohan Prasad before Nanda Kumar brought his charges. In particular, he knew about the civil suit, for he interfered in it by releasing Nanda Kumar when Palk had put him in confinement for contempt. This circumstance is proved both by Price and Impey, and it is only because Sir J. Stephen has not read the trial with care, that he doubts Impey's assertion that Palk confined Nanda Kumar. Impey was quite right in saying that it was in evidence, for Kamáladdin referred to it in his deposition.

Sixth.—Sir J. Stephen's view that the time was too short for preparation might have some foundation if Mohan Prasad had only seen the bond in April; but we know that he had had a copy more than two years before. All that happened in May was that Nanda Kumar was committed: the actual trial could not come on till June. Hastings and Mohan Prasad knew this, and consequently could calculate on having another month for the preparation of evidence.

The deposition which Mohan Prasad made in May has been lately discovered in the High Court of Calcutta.* It is very short, and does not touch upon the appearance of the bond, and for all that we know, Lemaistre and Hyde made their commitment without reference to any suspicious appearances in the bond. We at least know that the bond was not in the hands of Ganga Vishnu's attorney, Driver, at about the time of the commitment, for Durham had it three days before Nanda Kumar was committed. Now Durham was the Company's lawyer, so that it would seem as if the prosecution was being looked after by one of Hastings' subordinates. The fact is, that Sir J. Stephen has, in his eagerness to vindicate the reputation of a brother Judge, involved himself in contradictions. First, he tells us that the interval between Nanda Kumar's accusations and the forgery charge was too great to allow of a connection between the two; then he tells us that it was too short to admit of Hastings' getting up the case; and finally, he says that the case was so badly got up, that

* Appendix M.

it is unlikely that an able man like Hastings could have had anything to do with it. Now, as Sir J. Stephen's view is that Hastings was ignorant of the civil suit, and had little time for preparation, plain people would say that the weakness of the case was a proof that Hastings had got it up, and not Ganga Vishnu or Mohan Prasad, who were fully acquainted with all the facts, and in particular, were familiar with the proceedings in the Civil Court. The gallant knight has rushed like a lion into the fray, but, alas, he has lion-like been caught in the toils, and I much fear that all the little rats of the British Press will be unable to nibble him out again, even if they be as numerous as those who followed the Pied Piper of Hamelin.

Hastings' letters of the 27th March and 18th May are to my mind strong evidence of his being connected with the prosecution. In the first, which was written before the conspiracy or forgery charge had been set on foot, Hastings was in the depths of despair, and was contemplating an immediate flight from India. He writes of a resolution which he has made to leave the place, and says that he shall consider himself at liberty to quit the hateful scene before his enemies gain their complete triumph over him. In the next, which was written in less than a fortnight after Nanda Kumar had been flung into jail, his tone is changed. He retracts his resolution to leave at once, and determines to wait the issue of his appeal to the Directors. His reasons are, that he cannot believe that the majority will be supported in their barefaced declarations of their connection with a scoundrel like Nanda Kumar, or that the people of England will approve of such things as their visit to Nanda Kumar when he was about to be prosecuted for conspiracy, and their elevating his son to high office when he was in gaol, and in a fair way to be hanged. In the same letter he incidently gives a striking proof of the terror which was created among his native accusers by Nanda Kumar's commitment. After mentioning that Dalil Rai, the farmer of Rajshye, had been dismissed, and Rani Bhowani restored, and that one Nanda Lal had also

been dismissed because he had tried to dissuade Ram Krishna, the adopted son of the Rani, from engaging in the dirty work proposed to him (*i. e.*, accusing Hastings), and because he had at last separated himself from Ram Krishna, he adds, "After Nanda Kumar's commitment, the young scoundrel (Ram Krishna) sent an emissary to Kanta, entreating my forgiveness, and offering to reveal the arts which had been practised on him by Nanda Kumar to compel him to put his seal to the petition, if I would signify my approbation of it ; but the General sent for him, took a second petition in confirmation of the former, and he is now tied down to the party for ever." We see, then, that Hastings' fortunes turned upon the Nanda Kumar question. If the majority were successful in their support of Nanda Kumar, Hastings would be ruined, and would have to leave India ; but if the counter-attack, made with the help of the Supreme Court, were successful, Hastings would win the day.

It, therefore, cannot be denied that Hastings had strong motives for destroying Nanda Kumar. He was the first native who stood forth as his accuser, and he was the last. They had been enemies from 1758, and so enduring was Hastings' hatred that he wrote of him many years after his death, as the only man of whom he had ever been the personal enemy, and as one whom he detested from his soul even when compelled to countenance him. It is admitted that Hastings tried to crush him by instituting the conspiracy charge, and one has only to read the lengthy petition which Nanda Kumar and Fowke were accused of extorting from Kamáladdin, to see how futile and preposterous the charge of conspiracy was. It was impossible for even the best disposed jury to do other than acquit on such a charge. The inducement to destroy Nanda Kumar was almost equally strong, whether his charges were true or false, though, of course, we should sympathise with Hastings if we thought him unjustly accused. But I think that no reasonable person can doubt that Nanda Kumar's charges were true. Sayer, the Company's counsel, thought that Hastings' conduct in dissolving the meetings of Council

was proof of conscious guilt, and even his most devoted apologist admits that this circumstance, and also the fact that Hastings never denied the receipt of the bribes mentioned by Nanda Kumar, are some evidence against him. There was nothing in Hastings' antecedents or opinions to make it improbable that he had taken the money. He was in debt and difficulties the whole of his long life, and was always borrowing money. Larkins, his Accountant-General, and a very friendly witness, said that Hastings began to borrow money very soon after he came to Bengal, and that he was very indifferent from whom he borrowed. In the case of a public man in India, this is almost equivalent to an admission that he took bribes right and left.

It was to Hastings' not being an economist either for himself or the public, that his friend Lord Teignmouth attributed most of his errors.* Consider, too, the society in which Hastings had been brought up, and the temptations to which he was exposed. These were naively stated by him in a letter to the Court of Directors of 25th March 1775, about his stopping the tribute to the King of Delhi. "The stoppage of the King's tribute," he writes, "was an act of mine, and I have been often reproached with it. It was certainly in my power to have continued the payment of it, and to have made my terms with the King for any part of it which I might have chosen to reserve for my own use; he would have thanked me for the remainder." When he made his defence in the House of Lords, he said that he had never denied

* Hastings flung about his (if indeed it was his) money in a most reckless way. He gave a large present to his god-daughter, the daughter of Mrs. Hancock, and he spent, or allowed Ganga Govind Singh to spend, about a lakh of rupees on diamonds for Mrs. Wheler. See Larkins' evidence on Hastings' Trial, p. 2713. The lady was Wheler's second wife, and the payment was made apparently in 1781 when Wheler was the only Member of Council in Calcutta, and it was an object to keep him in good humour. Hastings affected to disapprove of Ganga Govind Singh's proceeding, but he did not disavow him. According to Price, Wheler was originally a linendraper in Cheapside, but for all that he was of good family, being the younger son of a baronet.

taking presents before the Regulating Act forbade it. Admittedly Nanda Kumar's charges were true as regarded one and-a-half lakhs and the granting of Baharband Pargana to his banyan. Hastings made out that the money was the ordinary entertainment charge of a Governor - General, and Sir J. Stephen thinks that this defence is borne out by Mr. Wright's evidence. He forgets that the allowance was paid to Hastings when the Nawab was a minor, and when, on that account,* his income had been reduced from thirty-two lakhs to sixteen. There is no proof that Clive or Verelst ever drew such an enormous sum as one and-a-half lakhs for entertainment money, and even if they did, surely, when the Nawab's income was reduced by one-half, there should have been a corresponding reduction in the entertainment charges. Sir J. Stephen has attempted to show that Clavering did not consider Nanda Kumar an important witness against Hastings, and that, consequently, the latter had not a strong motive for getting rid of his evidence. But it seems clear that all that Clavering meant was, that Nanda Kumar's evidence had been invalidated by his conviction.

There are many indications that Hastings interested himself in the forgery case. Before it actually commenced, he was having interviews with Mohan Prasad at his town and country house. This fact rests on the authority of Nanda Kumar, but I see no reason for doubting it, especially as the statement was made long before Mohan Prasad had prosecuted Nanda Kumar. It is also in accordance with Hastings' treatment of Nanda Kumar's other accuser, Kamáladdin, whom Hastings admittedly invited to Belvedere in April. On 6th May, Nanda Kumar was committed to jail, Hastings' protégé, Elliot, being the interpreter at the proceedings, and next morning Hastings was lamenting to his friends that bail had been refused, as people would lay the blame of this upon him. His fear was no doubt just, but the hypocrisy of his regret that bail had not been allowed was proved by his conduct next

* By the Directors' letter of 10th April 1771.

day, when he objected to any inquiries being made as to the place where Nanda Kumar should be confined. A fortnight afterwards we find Hastings gloating over the prospect of Nanda Kumar's being hanged. Once the case was set afoot, he discreetly withdrew into the background. He knew that the affair was in safe hands, but he emerged again when there was a question about respiting Nanda Kumar, and employed his private secretary to thwart Farrer in his attempt to obtain a respite. Immediately after the execution, he allowed Elliot to go home to defend the Judges, and he violated his oath of secrecy by supplying Impey with copies of his colleagues' minutes.

It is surely strong proof of Hastings' connection with the prosecution, that nearly everybody who had to do with it was a friend or dependant of his own. The Chief Justice was a school-fellow and a bosom friend, Elliot, the interpreter, was a member of his family, and Stewart and Robinson, the foremen of the grand and petit juries, were his friends and dependants. Weston, too, must have been in his intimacy, for he was the servant of his old chief, Holwell. Mohan Prasad, the ostensible prosecutor, had been treated by Hastings with extraordinary favour, and Kista Jiban was Mohan Prasad's servant, and wholly dependent on him. Kamá�addin, the chief witness, was closely connected with Kanta Babu and with Sadaraddin Munshi and Ganga Govind Singh.

Sadaraddin had been for many years the servant of Graham, who was Hastings' intimate friend, and was joint agent with Macleane for Hastings in England. At the time of the trial, Sadaraddin was in the service of Hastings' other great friend —Richard Barwell.

Khwaja Petrus was an old creditor of Hastings, and connected with him by a common intimacy with Mir Qasim, and a common hatred of Nanda Kumar. Maharaja Naba Krishna was the *munshi* of Hastings in his boyish days, and was so attached to him that, according to Hastings, he lent him three lakhs of rupis, and would not take a bond for the amount. He, too, was an old enemy of Nanda Kumar.

Hazari Mal was a man whom Hastings had favoured by giving him the collections of the Purniah District and by the institution of the Bank. Camac was one of the two military collectors to whom Hastings referred in his opening minute at the Council-board, and with regard to whom he said, that they corresponded only with the Governor. Camac was also, I believe, at a subsequent period, Hastings' private secretary. Even the *munshi*, who compared the copy of the bond in the indictment with the original, seems to have been Hastings' servant, for probably the Sher Ulah Khan of the trial is identical with Sheriyat Ulah Khan who was Hastings' *munshi*, and who gave evidence in the conspiracy case. On the other hand, Rup Narain Chaudhari, an important witness for the defence, was a man whom Hastings had singled out as being an enemy of his own. To conclude as to my third proposition, we have Hastings' own admission that Impey hanged Nanda Kumar in order to support him. Endeavours have been made to show that Hastings' words refer to the resignation affair, but I have elsewhere given my reasons for thinking that the attempt has been unsuccessful. It is certain that his language must refer either to the resignation, or to Nanda Kumar, but it is most improbable that it can refer to the resignation: *First*.—Because Impey's support was not essential on that occasion, as the Judges were unanimous. Supposing that Impey, instead of supporting Hastings then, had gone against him, the result would have been the same, for the opinions of the other three Judges would have prevailed, even if we suppose that, on an extra-judicial reference, Impey would have been entitled to a casting-voice. *Second*.—Because Impey was far from thoroughly supporting Hastings on the occasion, and Hastings was surprised and disgusted at this. *Third*.—Because it is impossible to show how Impey's holding that Hastings' agent had not tendered his principal's resignation, but had only stated his desire to resign, could save Hastings' honour and reputation.

I shall conclude this part of my subject by quoting what I wrote on it in October 1877.

The incident of Nanda Kumar's trial has been treated of by Macaulay, but he has not gone fully into it, and it appears to me that he has not done justice to Nanda Kumar and has let off Hastings much too easily.

Some writers have been foolish or prejudiced enough to declare Hastings perfectly innocent in the affair. Macaulay was far too clear-sighted and too honourable a man to commit such a folly, but he has committed an error, which is, I think, of much more dangerous consequence. He has lavished scorn and invective on Sir Elijah Impey, who, after all, was a very subordinate villain in the drama, and has thrown such a glamour over Hastings' share in the matter that we rise from the perusal of the essay with minds much fuller of admiration for the daring and skill of Hastings than of disgust at his cruelty and want of principle.

After detailing all the iniquities of the trial and sentence, and after declaring in his own epigrammatic fashion that everybody, except idiots and biographers, is of opinion that Hastings was the real mover in the business, he makes the following extraordinary remark :—"While, therefore, we have not the least doubt that this memorable execution is to be attributed to Hastings, we doubt whether it can with justice be reckoned among his crimes." Surely there is a strange inconsequence here, and one much more lamentable and surprising than that which the essayist finds in the conduct of Pitt with regard to the Cheyt Singh charge. If Nanda Kumar was murdered, the brand should be stamped on the man for whose advantage, and at whose instigation, the murder was committed, and not on the humble instrument. After all, it was not Impey but the jury who found Nanda Kumar guilty, and who got him hanged, and possibly both Impey and the jury really believed that Nanda Kumar had forged, and that he deserved death. The man, however, who put all this in motion was Hastings; but for him the prosecution would never have occurred, and he therefore is guilty of Nanda Kumar's blood. So far from the execution not being one of Hastings' crimes, we are inclined to think it is the worst he ever committed, for it is the only

one which he seems to have committed solely for his own advantage. In the Rohilla war and in the maltreatment of Cheyt Singh and the Begams of Oude he had the interests of others to serve, and probably he did not reap any personal advantage from these transactions. But the sole object of the prosecution of Nanda Kumar was a selfish one. Hastings had taken gifts or bribes ; it was inconvenient for him to acknowledge this or to make restitution, and so he killed his accuser. There is nothing heroic or even excusable in this, and there is no reason why we should refuse to condemn him for it. Macaulay insinuates, rather than asserts, that Nanda Kumar's charges were false ; but if so, why was he put to death, or why did Hastings never at any time attempt to clear himself ?

What makes it the more important that the case of Nanda Kumar should be set in its true light is, that a work has recently been published under the sanction of the India Office in which the old rubbish about Hastings' innocence and the malignity of Francis and Elliot has been reproduced. Mr. Markham has apparently found it impossible to edit the Travels of Bogle and Manning without having a fling at the accusers of Hastings and at Lord Macaulay. Mr. Markham is, I suppose, a descendant of the Archbishop who distinguished himself by his impertinent interference with Burke's cross-examination of Mr. Auriol, and of whom one of Hastings' correspondents (Pechell) thus significantly writes—"The Archbishop of York is an active and steady friend, and such as a man should be who is thoroughly grateful for the favour you have shown his son."

4. *That Kamáldadin Khan, the principal witness in the three trials for conspiracy and forgery, was closely connected in business with Kanta Babu, the banyan of Hastings, and was the intimate friend of Sadaraddin Munshi. . . . Also that Kamáldadin was a man whose word could not be believed, and who had been justly described by Clavering as an infamous creature, and by Mr. Fowke as the scum of the earth. As Sir J. Stephen admits that Kamáldadin was a very poor creature, and one who considered common false-*

hood as fair play, I do not think that I need spend many words in proving him worthless. A study of his conduct in December and April, and of his depositions, is enough to prove this.

For proof of his connection with Kanta Babu I need only refer to my account of him in the narrative of the conspiracy and forgery trials, and to the documents in the appendix.

5. *That the trial was unfairly conducted, and that, in particular, the Chief Justice's manner was bad throughout.*

For detailed proof of this point I must refer to the body of my essay. To the points there urged, I may add that Nanda Kumar was probably, to some extent, taken by surprise by the charge of forgery. The recognizance taken from Mohan Prasad (of 7th May) shows that the only charge then made was one of feloniously uttering as true a false and counterfeit writing obligatory to defraud the executors of Bolaqi Das. I contend, also, that a trial, in which the Chief Judge, the interpreter, and the foreman of the jury were intimate friends of the concealed prosecutor, could not be fairly conducted. Nanda Kumar objected to Elliot's interpreting, evidently on the ground of his intimacy with Hastings, but Impey roughly repelled the objection. Elliot was not a member of the Court, and could only have been present at the commencement of the trial by previous arrangement. I submit that Impey's manner was bad on this occasion, and he made matters worse by his subsequent false assertion that Elliot served voluntarily as interpreter. Impey showed his bias again when he censured Farrer for objecting, very reasonably as I think, to the jury's offhand rejection of the Persian letters. His manner, too, and that of Hyde and Lemaistre were so bad to the witnesses for the defence, that Nanda Kumar wanted to give up his defence and submit to his fate. It is clear that Farrer thought that Nanda Kumar had reason for despair, as otherwise he never would have entered on the delicate task of remonstrating with the Judges (for this was, in fact, what he did). Why too did he avoid giving Nanda Kumar a direct answer if he thought his idea groundless? Sir Robert Chambers

evidently thought that Nanda Kumar's complaint was just, for he sent him a private message through Farrer, that every question he had, or should, put to any of Nanda Kumar's witnesses, had been, and should be, as much in support of as against them. The record of the trial shows how minute and inquisitorial the Judges' examination was, and it is clear from Farrer's account, that they had made up their minds from the beginning that the defence was false. What they said to Farrer was, that his witnesses seemed to have been prepared, and that the nature of the defence was suspicious after the plain tale told by the prosecution. It appears from Sir Gilbert Elliot's speech that Impey actually kept one of Nanda Kumar's witnesses seven hours under examination.

Sir Elijah's charge was, I think, unfair with its sneering comment about the number of witnesses to the bond produced by the defence.

His manner to Farrer about the recommendation to mercy was admittedly bad, and so also was his scornful rejection of Mubarak-ad-Daula's petition.*

* Sir Elijah's coarse and indecorous manner on the Bench is shown by his telling the story about the Pope's Nuncio in the proceedings about Radha Charan. The story might be a good one in itself, but it was improper to tell it from the Bench, especially when by doing so Impey implied that Radha Charan was guilty of an offence for which he had not then been tried. Sir Elijah seems to have been a man of coarse manners. His son's Memoirs give some indication of this, and Wraxall says that he knew him personally, and always entertained strong prejudices in his disfavour, prejudices which neither the expression of his countenance, nor his manners, tended to dispel.

Impey's brutality was too much even for Price, who writes that the Chief Justice was lowered in the opinion of his countrymen by his declaration from the Bench that the word flagellation was inserted in the Charter of Justice at his particular request, and that he would whip a gentleman in Bengal for disobeying a summons. This refers to a matter which was more correctly stated by William Hickey, the attorney, in his evidence before Touchet's Committee. He deposed that Impey declared from the Bench that in case of refusal of any person subpoenaed to attend, or even of a person absenting himself in order to avoid being served with a subpoena, that the Court was empowered, and would most certainly inflict corporal punishment.

In addition to other evidence of the unfairness of the trial we have the fact, recently discovered on inspecting the High Court Records, that Elliot interpreted on the 6th May as well as at the trial. This also shows Hastings' connection with the trial.

No argument in favour of the fairness of the trial can be derived from the fact that the Judges were a long time over it. The main causes of the delay were the interpreting and the desire of the Judges to break down Nanda Kumar's witnesses.

The trial occupies 119 pages of Cadell's edition (quarto), but several of these are taken up with the counts and with the charge to the jury. There are a hundred pages of evidence, and out of these about 27 are occupied with the evidence and document for the prosecution, and 73 with those for the defence. I beg to reproduce what I wrote on this subject and also on the allied subject of Hastings' connection with the prosecution in 1878.

The question of whether Nanda Kumar really forged the bond or not, is one which can probably never be satisfactorily answered. The original record seems to have disappeared from the archives of the High Court, and the printed report is not supposed to be quite faithful. It was printed by Elliot, who went home in order to support the Judges, and, according to Farrer, the prisoner's counsel, there are mistakes and omissions in it. It is certain that Mohan Prasad was

The word flagellation does not occur in the Charter, but it does give power to the Judges to punish contempt with imprisonment, or other corporal punishment not affecting life or limb.

Touchet's Committee intimates that this provision was not warranted by the Act of Parliament under which the Charter was made. Impey apparently boasted that its insertion in the Charter was his doing, and this and the fact of its going beyond the Act were probably the cause of the charge against Impey that he had illegal provisions entered in the Charter.

Another instance of Impey's brutality may be found in his answer to Mr. Lawrence when he expressed a hope that Naylor would not be obliged to answer in *viscaulis*. "Why not," he replied. "Mr. Naylor will have more time to think of his conduct and prepare his answer."—(Francis' Memoirs, II, 187.)

a bitter enemy of Nanda Kumar, and that Kamáladdnî, the principal witness, was a poor wretch who was the bennamidár (Scotticé *tulchan*) of Hastings' banyan.

Some legal authority or other has said that he has read the proceedings, and that Nanda Kumar had as fair a trial as he would have had in England. Perhaps this is not saying very much. The bond was in Persian and the witnesses were Bengalees.* It is not easy to see how a case, which presumably turned a good deal on a comparison of seals and signatures in a foreign language, could have been satisfactorily determined by a British jury, however intelligent.† It is, moreover, not true that the trial was quite fairly conducted. Sir Elijah's manner was bad throughout, and Mr. Farrer, the prisoner's counsel, stated before the House of Commons, that his wit-

* This fact is pointed out by Mr. Hargraves.

† I was writing then without having fully studied the trial. Still I think that the question of Silavat's signature (there was no seal in his case) was an important question at the trial, and it was one of which the jury could not judge, for they could not satisfactorily compare the Persian of Exhibit G with the Persian of the signature to the bond. Of course when I said that Nanda Kumar could not have had a fair trial in England, I meant, as my context shows, only that the question was one which foreigners could not try. There was, therefore, no occasion for Sir J. Stephen's rhetoric about Lord Mansfield (I, 185 note). It was not likely that I should venture to deprecate my distinguished countryman. At the same time the selection of Lord Mansfield is rather curious, for Sir J. Stephen must know that Junius was not the only man who thought him unfair.

Sir J. Stephen says that fairness means only impartiality, the absence of passion and partizanship. But if a man were tried by Minos, Rhadamanthus, and Noshirwan (*a*) he might say that he had not had a fair trial if his judges had not understood the language of the witnesses, and the circumstances of the case.

(a) A Persian king famous for his justice. The name is said to mean sweetly flowing. Kamáladdnî refers to him when expressing his admiration of the Supreme Court. He was a contemporary of Justinian. "I am fifty years old, I have seen the darbars of subahs and kings, and such a court I have never seen. I have read of such a court that now Shahwan (that of Noshurwan)." I think it is a pity that Impey should not get the benefit of this eulogium, and which is not quoted by Sir J. Stephen. I have no doubt that Kamál said truly that he had never seen such a court.

nesses were badly treated by the Judges, and that, when he remonstrated, they were treated worse. The temper of the jury may be judged from the fact that during the progress of the trial, when a paper was produced by the defence and shown to the jury, their foreman observed that it was an insult to their understandings to offer such papers in evidence as being of the date they professed to be. This might pass, but surely it was not seemly that, after the trial was over, and while the prisoner was awaiting execution, no less than eight of the jurymen should have signed an address to the Chief Justice in which they thanked him for the pains he took in the late tedious and important trial. "We cannot refrain," they say, "from declaring how much we esteem ourselves indebted to the pains you bestowed during the course of the late tedious and important trial in patiently investigating the evidence, and tracing the truth throughout all the intricacies of perjury and prevarication, and in finally detecting and putting in the way of condign punishment the cloud of false witnesses who seem to have acted from concert, and to have had hopes of introducing into the Court, under the shelter of an unknown tongue and concealed forms of oath, a general system of false swearing to the total subversion of all belief in evidence, and to the utmost danger to the life and property of every man in these provinces?"* The name of the foreman of the jury appears second in the list of signatories, and is followed by that of the notorious Captain Price. Sir Elijah's reply was not in much better taste. He said: "Neither can we assume to ourselves any extraordinary merit or sagacity for detecting the falsehoods of the witnesses produced at the trial. The subject-matter of the evidence, the manner of delivering it, and the persons who delivered it, made the imposition attempted to be put on the Court too gross to deceive either the Court or such bystanders as did not through prejudice wish to be deceived."

* Impey stated in his defence before the House of Commons that a band of witnesses sent down from Bardwan disappeared when the gross practices on the part of the prisoner in evidence were detected.

These documents may be found in the Appendix to Mr. Impey's memoirs. They seem to me to weaken his defence rather than otherwise. Mr. Impey and his following are never wearied of complaining of the injustice of attributing all the guilt, if there was guilt, of Nanda Kumar's trial to the Chief Justice. They are constantly reminding us that he was only one of four Judges who presided on the occasion, and that it was the jury and not he who found the prisoner guilty. But here we have the free merchants, including eight of the jurymen, ascribing all the merit of the trial and of the detection of the false evidence to the Chief Justice.

The fact that the trial of Nanda Kumar lasted for several days does not of itself prove that there was any tenderness towards the prisoner; criminal trials in Calcutta must always take about double the time that is necessary elsewhere, for everything has to be done twice. The counsel does not ask his questions directly of the prisoner. He puts them through the interpreter, and thus the answers dribble out like water through a charcoal filter. A trial so conducted may seem solemn and imposing to some persons, but I imagine that the "intelligent native" must regard it with astonishment. Such a person, who is to us in India the Frankenstein's ghost* that the "intelligent foreigner" is to our countrymen at home, must surely reflect that a Hindoo or Mahomedan Judge would at least know what the witnesses were saying and would not have to veil his ignorance by assuming a Thurlow-like aspect of preternatural wisdom.

The real question, however, is not whether Nanda Kumar was guilty, but whether he ought to have been prosecuted, and whether, having been tried, he should have been hanged.† On the first point I think it is clear from Mohan Prasad's interviews with Hastings before the trial; from Kamáladdin's

* I am indebted to Sir J. Stephen for his pointing out to me that I had originally confused Frankenstein with his ghost.

† As Francis wrote not long after the execution: "Nanda Kumar may have been a most nefarious scoundrel; but, by God! he spoke truth, else why were they in such a hurry to hang him?"

being a witness, and from the coincidence of time between Nanda Kumar's accusations and the prosecution, that the latter would never have occurred had not Mohan Prasad been suborned by Hastings or his friends.

The fact that Hastings was at the bottom of the prosecution was apparently never doubted at the time either by his friends or foes. Nanda Kumar was evidently referring to this belief when he objected to Elliot's being interpreter, and Macpherson wrote from Madras to Hastings in the month following the conviction and implored him to take precautions for his safety. "Do not," he said, "employ any black cook; let your fair female friend oversee everything you eat." Hastings himself was fully conscious of the currency of the report, for when he was examined in Fowke's case, and asked if he had directly or indirectly countenanced the prosecution against Nanda Kumar, he answered: "I never did, I have been on my guard; I have carefully avoided every circumstance which might appear to be an interference in the prosecution." And no doubt he was on his guard, and so too, I suppose, was Count Königsmark when he employed bravoes to assassinate Mr. Thynne in Pall-Mall. Königsmark got off in consequence of his precautions, and so, too, did Hastings; but most sane people, I fancy, do not think the better of them on that account. Let us put it, however, on the very lowest ground and concede that Hastings had nothing to do with the prosecution. Even then we say that his conduct was disgraceful. He knew well what Nanda Kumar and the great bulk of the people thought on the matter, and he knew that Nanda Kumar had stood forth as his accuser. If he had been a delicate-minded or even only an honest man, he would have quashed the prosecution or have tried to stay the execution till Nanda Kumar's charges had been disposed of.

6. That the jury was prejudiced and incompetent.

Their incompetence is patent, because they were Englishmen, or Eurasians, and were trying a native, when for the most part they did not know the language in which the evidence was recorded. That they were prejudiced is shown

by their remarks about the Persian letters, and by the conduct of their foreman with regard to Farrer's application for a recommendation to mercy. It has been said that the jury was returned by Macrabie, the brother-in-law of Francis, but Macintosh, writing from Calcutta in December 1779, states that two gentlemen, whose initials he gives, were struck off the corrected venire of the Sheriff on account of their being persons of unshaken integrity. Price professes not to know to whom the initials refer, but he admits that some persons were removed from the list, though he says this was done to prevent interruption to public business. However this may be, I think that the defenders of Impey and Hastings should explain how it comes that so many of the twelve jurymen were obscure men. A trial such as that of Nanda Kumar, the prime-minister of Mir Jafar, should have been before men of more standing. Poor Nanda Kumar asked to be tried by his peers. The Court asked whom he considered his peers, and then Impey said that he could only be tried by British subjects. But if, as the Judges then thought, all inhabitants of Calcutta were British subjects, on account of Calcutta having been conquered by Clive and Watson, why were there not some native inhabitants of Calcutta on the jury?

(The seventh point has been already discussed.)

8. *That the execution was iniquitous, even on the supposition of Nanda Kumar's guilt, and that it was the result of a plot to stifle inquiry into bribery and corruption.* As everybody, including Sir J. Stephen, admits that the hanging of Nanda Kumar was wrong, i.e., that it was at least a mistake, I need not say much about this point. When it was proposed to impeach Impey, he was only saved by his brother lawyers and by the friends of Hastings and Pitt. He had a majority of eighteen out of a house of 138; but in his majority were Barwell and Major Scott.*

* As Sir Gilbert Elliot wrote to his wife: "We were beat yesterday, but our defeat is very like a victory. Sir E. Impey had his own personal friends, the lawyers, in a body—that is to say, fifteen of them out of twenty who were present—the whole Indian corps, Lord Lansdowne's squadron, and the whole force of the Ministry; and with all this he could raise a majority

Sir J. Stephen ascribes Macaulay's attack on Impey to his inheriting the Whig-hatred of Impey. But Wraxall was not a Whig, and yet his opinion of Impey was so bad, that he left London in order to avoid giving a vote. He adds that if he had been compelled to vote, he would have voted with the minority, and that he believes that two-thirds of the members who absented themselves would have done the same. Even Impey's lawyer-friends made some damaging admissions in their defence of him. Thus, both Macdonald and Arden, the Solicitor - General and the Attorney - General, though they spoke and voted in Impey's behalf, admitted that they would have respited Nanda Kumar if they had been trying the case. Wraxall justly says that these admissions were a moral condemnation. A plain question will perhaps set the matter at rest. Does anyone doubt that if Nanda Kumar had been respited, the Court of Directors would have procured a pardon for him? Certainly they would have acted as they did in Radha Charan's case, and no reason can be given why the Judges did not follow the precedent set on that occasion. It is absurd to say that Nanda Kumar had been warned. He was not in Calcutta when Radha Charan's case occurred, and was probably in confinement when Government recommended him to mercy. There is no evidence that he ever heard of Radha Charan's case, for Price's story, that he signed the petition in his favour, is a fiction.

9. *That Sir J. Stephen has made grave mistakes in his account of the trial, etc.* For proof of this point I shall only refer to this essay *passim*.*

of only eighteen. The numbers were 55 to 73, and we lost Francis, who could not vote from a point of delicacy, and also Sir George Cornewall, who was in the chair." This quite agrees with Wraxall's remark that, if after deducting the personal friends of Pitt and Hastings, we calculate Impey's majority, we shall find it reduced almost to a nullity. Well might the same author say, that Impey owed his security to his profession, and that though the result might be deemed an escape, it could not be denominated a triumph.

* Sir J. Stephen (II, 90) quotes a remark of Elliot to the effect that Sir J. Johnstone was drunk, and says: "Some light is thrown on the reference to Sir J. J.'s being drunk by a passage in Wraxall." According

One word in conclusion : Sir J. Stephen says that whatever is true of Impey is true of the other three Judges of Nanda Kumar and of the twelve jurymen, and he asks, " Why should sixteen persons commit a frightful crime without a motive ? " Again he says that the " effect of Elliot's argument is, that four Judges and twelve jurors unanimously agreed to commit a fearful crime in order to intimidate natives from complaining of Europeans."

to Wraxall, Johnstone said that the House had beheaded a King, hanged a Peer, and shot an Admiral, and was now trying a Governor-General, and that he did not see why it should not put on his trial a Judge and a Chief Justice. Sir J. Stephen then remarks, " Sir J. Johnstone must have been very drunk, indeed, if he thought the House of Commons had anything to do with the execution of Charles I, or of Lord Ferrers, or of Admiral Byng, or that it was trying Hastings."

This shows the evil of second-hand information. If, instead of referring to Wraxall, who was not in the House but reported from hearsay, he had gone to the Parliamentary History (Vol. 27, 485) he would have found that Johnstone said nothing about the House of Commons. His speech is so pithy that I quote it in full. " Every argument he had heard confirmed him in the idea that the question ought to be supported. The carrying it, he conceived, would not amount to a trial of Sir Elijah Impey, but would be in the nature of a grand jury finding a bill of indictment that was to put a person on his trial. To this trial Sir Elijah, in his mind, ought to be sent. The dignity and independence of our laws respected neither rank nor situation. They (the laws) had, unfortunately, beheaded a King, they had hanged a Lord, they had shot an Admiral, they were now trying a Governor-General, and he saw no reason why they should not have an effect on the other profession, that of the law, and put a Judge and a Chief Justice on his trial. "

Then as to the allegation of drunkenness, Elliot says that at 10 P.M. " a little disturbance happened by Sir J. Johnstone's being drunk." But the debate went on till 7-30 next morning, and Johnstone spoke near its conclusion, so that even if drunk at 10 P.M., he had time to recover before speaking. As he voted against Impey, and as his speech seems to have been a really good one, it is fair and important that the real facts should be known.

The above is not the only instance in which Sir J. S. has misstated the language of the accusers of Impey and Hastings. He tells his readers (I, 28) that Burke said it was foolish and indecent in Lord Coke to call Raleigh a " spider of hell." But that had he been a manager on this Hastings' trial, he (Coke) would have been guilty of a neglect of duty had he not called the prisoner a spider of Hell. Now it is true that the editor of Hastings' trial quotes this and other extravagant expressions

I shall not say that this is the style of eloquence which Sir J. Stephen compares to mouldy wedding cake, but I am sure that it is of the species popularly known as Old Bailey. It is quite in the style of the gentleman who gets up to defend some hoary "fence," and begins, "Gentlemen, I appeal to you on behalf of my injured client. The charge against him has been carried on with a malignity which is unparalleled. Gentlemen, it has ceased to be a prosecution, it has become a persecution"; and then he thunders on the table. Sir J. Stephen knows perfectly well that this tall talk about sixteen murderers is irrelevant. Nobody says that the jury knowingly condemned an innocent man. I say that they were prejudiced and incompetent, but I do not for a moment assert, or insinuate, that they violated their oaths, and found a man guilty whom they believed innocent. I do not even say that Impey knew that Nanda Kumar was innocent. I do not think that he was patient enough, or had enough knowledge of the circumstances to say whether Nanda Kumar was guilty or not. Probably he did believe him to be guilty, and I have no doubt that poor, narrow-minded, and perhaps, half-deranged Hyde was of that opinion. What I, and every honest man who knows the facts, blame Impey for is, that he allowed himself to be prejudiced by his partiality for Hastings, and his hatred of the majority, and that he hanged Nanda Kumar in order that peculators in general, and his friend and patron Hastings in particular, might be safe.

To sum up still more briefly; the three pillars of my case (to use an Arabic expression) are—

1st. That the forgery was not proved. •

as having been used by Burke, but the same editor gives the passage very differently in his report of Burke's speech (p. 121). Sir J. S. must know that Burke denied having used any of the expressions attributed to him, and that Francis declared that he had attended the trial with the greatest diligence, and that the expression "spider of hell" was never applied by his Right Hon'ble friend (Burke) to Hastings. Law (not Hastings' counsel, but I believe his brother) insisted that Burke had used abusive language, etc., but he relied only on rumour, and did not say that he had heard it.

2nd. That the prosecution was got up by Hastings.

3rd. That Impey hanged Nanda Kumar from corrupt motives.

I submit that all three have been irrefragably established.

At all events I do not think that there can be any doubt about the first two. Of course I cannot show that Impey was paid by Hastings for cutting off Nanda Kumar. Nor is it necessary that I should. There are many kinds of corruption, and in this case I do not suspect Impey of killing Nanda Kumar for a money reward. But if he strained the law in order to convict him, and if he, in Macaulay's words, "sitting as a Judge," put a man unjustly to death in order to serve a political purpose, he acted corruptly.

Sir J. Stephen (II, 86) objects to Macaulay's expression "sitting as a Judge," but it is difficult to see what there is objectionable in it. Macaulay was then writing of Impey's passing sentence on the prisoner, and not of his refusal to respite him. Surely Sir J. Stephen does not mean that Sir Elijah Impey was not sitting as a Judge when he passed sentence of death on Nanda Kumar, whether he did so on the 16th or the 23rd June!

I conclude with a letter of Francis, written only two days after the execution, to Sir Edward Hughes:

"The death of Raja Nanda Kumar will probably surprise you. He was found guilty of a forgery committed some seven or eight years ago; condemned, and executed on Saturday last. My brother-in-law (Macrabie), in virtue of his office, was obliged to attend him. Through every part of the ceremony, he behaved himself with the utmost dignity and composure, and met his fate with an appearance of resolution that approached to indifference. Strange judgments, I fancy, will be formed of this event in England."

Whether he was guilty or not of the crime laid to his charge, I believe no man here has a doubt that, if he had never stood forth in politics, his other offences would not have hurt him. This is a delicate subject, and rather open to speculation than discussion."

NOTE.—I quote this letter for the sake of its concluding sentences, but I think that it is valuable for another purpose, namely, to show the baselessness of the conjecture that Macrabie's account of the execution was not genuine. I think this letter gives the *coup de grâce* to such a notion, for here we have Francis, only two days after the execution, describing Nanda Kumar's behaviour just as Macrabie's account does. On the other hand, Barwell had the impudence or the carelessness to write that Nanda Kumar acknowledged the justice of his sentence! (Stephen, II, 288.)



APPENDICES.

Appendix A.

Errors and Inaccuracies in "The Story of Nuncomar" not mentioned in my text or foot-notes.

1. I, 10. "Mir Jafar was a miserable creature." I cannot think this a fair description. Verelst (p. 66 note) says that he was much beloved by his master Aliverdi Khan as a brave commander, but that he wanted industry in the administration of civil government. He did very good service against Murshid Kuli Khan, near Balasore.

2 I, 11. The diwani was granted to the Company, "represented by Lord Clive, who had just arrived from England" for the second time." This was Clive's *third* visit, and he had landed at Calcutta more than three months before the grant of the diwani.

3. Idem. Speaking of the seven years following the grant of the diwani (1765-72) Sir J. S. says: "Some feeble efforts were made in 1769 to keep a watch upon, if not to control, their proceedings (the Naib Dewans) by the appointment of Supervisors." He is apparently not aware that the Supervisors became collectors in fact, though not in name, in 1770, and that, according to Hastings, they were the sovereigns of the country. (Gleig, I, 234 and 268. Also Mill, III, 523 note.)

4. I, 22. I find no ground for the insinuation here made that Burke attacked the character of Hastings' mother. Francis heard in India that Hastings was a natural son, and Sir J. S. assumes first that Francis may have repeated this to Burke; and, secondly, that Burke referred to it in his speech. In fact, Burke's "a man whose origin was low, obscure and vulgar, and bred in vulgar and ignoble habits" says little more than Macaulay wrote, *viz.*, that Hastings learnt his letters on the same bench with the sons of the peasantry, and that he was dressed like them.

5. I, 23. "In 1764 Hastings returned to England." Gleig says (I, 132) that Hastings returned with Vansittart in 1764, but this is incorrect. Hastings' name appears as present at a consultation in Calcutta on December 26th, 1764, and a consultation of the 6th idem records that Vansittart had left for England. I believe Hastings went home in the *Medway* with his friends, the Hancocks, early in 1765.

6. I, 24. For errors concerning Baron Imhoff, see App. B.

7. Idem. Hastings' marriage took place, August 8th, 1777, and not as here stated, 1776.

8. Idem. "Hastings' stay at Madras was short and uneventful. He left Madras towards the end of the year 1771." Hastings was over two years in Madras, and was there long enough to become acquainted with such congenial spirits as Laughlin Maclean, Macpherson, and the Nawab of Arcot. He was also able to make some addition to his fortune. (Gleig, I, 286.) The translator of the *Sair* says, that Hastings paid off his debt to Khwaja Petiuse at Madras. He did not leave till February 2nd, 1772. (Gleig, I, 198.) Sir J. S. has followed an inaccurate statement in Gleig's text (I, 209), and has not noticed that Gleig is contradicted by Hastings' letters. The much-abused Macaulay was more exact. He writes: "Early in 1772 Hastings quitted Fort St. George for his new post."

9. I, 28 note. The contrast between Francis and Hastings here quoted is not, as stated, by Mr. Parkes, but by Mr. Wade.

10. I, 29. "If Francis was not Junius, his public life may be said to have begun when he landed at Calcutta; for up to that time he had had no avowed occupation, except that of holding a clerkship at the War Office."

In face of this utterance, it was hardly necessary for Sir J. S. to tell us that he had not studied the Junius question! He is evidently unaware that Francis was Secretary to Gen. Bligh on the expedition against Cherbourg, and that he was for nearly a year at Lisbon as Secretary to Lord Kinnoul.

11. I, 30. "Clavering was rash and violent to the last degree, and extremely pugnacious. Before leaving England, he wanted to fight the Duke of Richmond." Now it is true that Clavering wanted to fight the Duke, but Sir J. S. should have told the whole story. The Duke was very vehement, "but the newspapers often attributed to him more than he said. Some reflections on General Clavering's

character, supposed to have been delivered by the Duke, produced a challenge from the General. The challenge produced a disavowal of the words." In a note (*idem*) Sir J. S. refers to a curious history of Clavering's refusing to fight a certain resident at Serampore. The person in question was a Count Donop, and he was at Chandernagore, not at Serampore. Clavering declined a visit from him on the ground that he had known about him when he was at Hesse Cassel, and that he considered that he had acted an ungentlemanly part in accepting an unauthorized commission to make inquiries at Hamburg—in fact that he had been a spy. Donop wanted to fight Clavering for not receiving his visit, &c., and M. Chevalier tried to make out that Donop had done nothing dishonourable in Europe, but Hastings and the rest of the Council quite approved of Clavering's conduct in the matter.

12. I, 31. "Of Monson there is still less to be said," i.e., than of Clavering. Col. Monson was at least a brave soldier. He commanded at the siege of Pondicherry in 1760, and led the grenadiers when they successfully carried the bound hedge. He was wounded by a discharge of langrain (langrel ?), a piece of iron breaking both the bones of his leg. It was this wound which compelled him to make over the command to Col. Coote.

13. I, 32. Sir J. S. misquotes, *passim*, the title of Dr. Bussteed's delightful volume, "Echoes from Old Calcutta," and he is wrong about there being a mistake in Hicky's anecdote. Whatever it is worth, it is clear that Clive's remark (supposing him to have made it) was about Hastings. Clive had, on the whole, a poor opinion of Hastings, and I have never heard that Barwell had a reputation for seducing the wives of his friends. The book called the "Intrigues of a Nabob" does not disprove this, for the lady in that case was not a married woman. Hicky's comment clearly refers to Hastings' marriage.

14. I, 38. Nanda Kumar was "appointed by the Company to be Collector in the place of Hastings, of Bardwan, Nadiya, and Hugli." Nanda Kumar was appointed by the Committee and not in place of Hastings, but before the latter had been offered the Residency. Hastings' grievance was that Nanda Kumar was allowed to collect the old balances. He got a commission of $2\frac{1}{2}$ per cent., I believe, on the collections, and hence felt injured.

15. *Idem.* "In 1765, Nuncomar obtained the place of Naib Subah or Deputy Nabob of Bengal under Nujm-ul-Daula, who was appointed

titular Nabob by the Company after Mir Cossim's expulsion." Here Sir James Stephen confounds Najm-ad-Daula with his father Mir Jafar. Mir Jafar was made Nawab on Mir Qasim's expulsion, and remained so till his death in February 1765. Nanda Kumar was his diwan. When Najm-ad-Daula succeeded, he appointed Mahomed Reza Naib Subah. Afterwards he tried to get Clive to appoint Nanda Kumar, but Clive would not. In the Board's proceedings for June 1st, 1765, there is a letter from Najm-ad-Daula complaining that he has been obliged to make Mahomed Reza Naib, and requesting that he may be allowed to keep Nanda Kumar. .

16. I, 40. "Mahomed Reza Khan was acquitted, and the office he had held was abolished. Nanda Kumar was, however, rewarded for the services he had rendered, by the appointment of his son Rajah Goordass to the office of Diwan to the household." There is an anachronism here. Guru Das got his appointment in July 1772, and Mahomed Reza was not acquitted till 1774.

17. Idem, note. Najm-ad-Daula did not grant the Nizamat to the Company as here stated. The Nizamat was not interfered with till Hastings' reforms in 1772, when the Company stood forth as Diwan.

18. I, 42. In what sense was Tipu Saheb an adventurer?

19. Idem. "Of all the provinces of the Empire none was so degraded as Bengal, and till he was nearly 60 years old, Nuncomar lived in the worst and most degraded part of that unhappy province." Sir James Stephen's climaxes are not exactly Macaulay's! What was this worst and most degraded part of Bengal? Was it Murshidabad, Hugli, or Calcutta? In a note on the preceding page (39) there is a curiously perverse remark on Macaulay's description of Bengalis in general and of Nanda Kumar in particular. ("What the Italian is, etc.") Sir James Stephen observes that Macaulay having elsewhere remarked that Bengalis are feeble even to effeminacy, "Nuncomar, therefore, ought to have been hardly able to stand or even sit up," and he seriously sets himself to prove that Nanda Kumar was strong, tall, etc. This is not even "an affectation of smartness." (Stephen, I, 185.) It is hebetude pure and simple, Macaulay in these climaxes referring solely to moral character.

20. I, 44. Maqaulay has a paragraph about the disastrous effects of the Councillors' reforms on the security of property, etc. Sir

James Stephen says that he does not know to what Macaulay refers. Macaulay's remarks, however, are merely a paraphrase of a letter of Hastings (Gleig, II, 29), in which he says that the whole province is, even to the boundaries of Calcutta, a prey to dacoits.

21. I, 49. Sir James Stephen says that Hastings introduced Nanda Kumar to the Councillors through Elliot. Elliot, however, swore (1219) that he had been deceived, and that Hastings told him that he had not desired him to introduce Nanda Kumar to Clavering.

22. I, 54 note. I do not think the explanation here given by Sir James Stephen correct. He says that Nanda Kumar made a large supplement to the charges he had circulated before he came to the Council at all. If this means that he circulated charges before 11th March, the statement, I think, is incorrect. Hastings did indeed say that he had seen such a paper, but there was no evidence that Nanda Kumar had circulated it. I confess I do not understand what Sir James Stephen alludes to when he speaks of "the paper so referred to." I do not think that any paper produced by Hastings was entered on the Consultations. What seems to me the true explanation is, that there were two letters in the envelope which Nanda Kumar gave to Francis. One was in English and was read in Council on the 11th, and the other in Persian and was put into the hands of the translator. It was at first supposed to be merely the original of the English letter, but I believe that it was more, and that this accounts for the paper on the Consultation of the 13th being fuller than that of the 11th.

23. I, 64 note. Sir James Stephen corrects Thurlow for speaking of the law-officers of the Company. Would he be surprised to hear that the Company had two Standing Counsel and an Attorney? (See extract of letter of 25th February 1775, from Government to the Directors, quoted by Price, and also letter of 17th January 1775, Bengal App., 536.) See also (1105), where the fact that Standing Counsel existed was made a reason by the Judges for refusing to receive a letter from the Council. S. 16 of the Charter empowered the Governor-General and Council to appoint an Attorney for the Company, and authorised the Judges to make the appointment, if the Government failed to do so.

24. I, 103. Sir James Stephen says that the statement of the Councillors that Nanda Kumar did not drink water for eighty-six hours is absolutely denied by the jailor, Yeandle. He must have unusual

ideas of a contradiction. Yeandle's affidavit shows that all he saw was that Nanda Kumar's servants took water to him. He does not say that he saw him drink, and it is possible that the water was for ablution. It is worth noticing that the affidavits of Murchison, Yeandle, and Tolfrey, on which Sir J. Stephen relies, were not made till the 17th and 18th January 1776! They were taken by Impey himself, who got them up for his defence, just as he afterwards got up affidavits at Lucknow to help his friend Hastings. But he seems to have read those that he took for himself!

25. I, 55. "Touchet, afterwards the leader of the agitation against the Supreme Court, sat on the jury." Sir James Stephen goes on to say that this is a point of the first importance. Perhaps it might be so, if it were correct, but it seems to me that Sir James Stephen, like myself on a former occasion, has been misled by Impey. The jurymen were Samuel Touchet, and the petitioner to the House of Commons was John Touchet, his fellow-petitioner being John Irving.

26. II, 211 and 253. "Naylor, the attorney for the Zemindar." All the authorities speak of him as the Company's attorney, and he was so in fact, though he said that he also looked upon the Rajah of Kasijora as his client. Impey flung him into the common gaol at Calcutta and kept him there for more than a fortnight. His wife died while he was in jail, and this, with the confinement, probably hastened his death, which occurred in the following August. Impey had the hardihood to write of him as "my poor Naylor" and to lament his death!

27. II, 251 note. "The word 'alguazil' is, of course, used to give the bailiffs of the Supreme Court a kind of flavour of the inquisition." Literature is not Sir J. Stephen's strong point: Macaulay found his alguazils in Gil Blas.

28. Sir J. Stephen is not always fortunate even when he praises Macaulay. Thus he calls attention to Macaulay's love for local colour as shown by his correction of the Hooghly for the Ganges in his account of the scene after Nanda Kumar's execution. In fact, Elliot was right. The Hooghly is a trivial European name not used by the natives, who call the river the Bhágirathi, or, more commonly, simply Ganga.

Appendix.*Baron Imhoff.*

As Sir James Stephen has tried to whitewash Impey, and Sir Louis Jackson thinks he has succeeded, I feel emboldened to try my hand at whitewashing Baron Imhoff. I really think that he is the more promising subject of the two. The damaged surface is not so extensive, and the coating of *chunam* is more likely to be weather-proof. I do not pretend that I can show him to have been a good man, but I think I can undertake to prove that he was not quite so bad as he has been represented.

Sir James Stephen says (I, 24) "Hastings'" connection with her (Mrs. Imhoff) is not creditable to his memory. He seems to have bought her from her husband. This man had the meanness to live with her first at Madras and afterwards at Calcutta, whilst proceedings for a divorce were going on in the German Courts. When the divorce was obtained, Hastings married Mrs. Imhoff and sent Imhoff back to Germany with £10,000 as the price of his infamy."

I believe that there is no authority whatever for the statement that Imhoff received £10,000 from Hastings. Gleig does not say so, and Sir James does not refer to any other source of information. Woodman, the brother-in-law of Hastings, writes on 10th December 1773, that he had paid Imhoff part of the £500 for which Hastings had drawn upon him, and that he would pay the remainder within the month; and that the other £500 would be paid when it is due. But these payments seem to have been partly for work done as a portrait painter, for Imhoff took home a portrait of Hastings and gave it to his sister (Mrs. Woodman).

Nor is it the case that Imhoff lived with his wife till the divorce was obtained. He came out to Madras to earn his bread honestly, and he stayed there as long as he could get work. He then went on to Calcutta in the latter part of 1770, and meanwhile his wife stayed behind and lived in Madras with Hastings. In October 1771 she came off to Calcutta, but probably this was by an arrangement with Hastings, for it is likely that he knew then of his appointment to Bengal. Imhoff did apparently live with his wife in Calcutta for some time, but he cannot have been with her very

long, for he was in England in December 1773, and next month he went over to Germany. I am not aware that he ever came back to India, and so it is possible that he left his wife and took steps to obtain a divorce as soon as he was convinced of her infidelity. I think that it might have occurred to a lawyer like Sir James Stephen, that even a German Prince was not likely to grant a divorce unless Imhoff went home and asked for it. According to Francis, one Johnson negotiated the divorce, and as a reward for this his brother got an army contract. It is a fact that Ernest Alexander Johnson got a contract in 1777 for supplying bullocks to the army, and this was one of the charges in Hastings' impeachment.

According to the German version of the story, Imhoff was not at first willing to separate from his wife, and he did not return to Germany a rich man.* He married again in Germany, and his sister-in-law, a lady of Scottish extraction, was the famous Frau von Stein of Goethe's correspondence.

In the same page (I, 24) Sir James Stephen says, with his usual inaccuracy about Indian matters, that Hastings married Mrs. Imhoff in 1776. The marriage really took place on 8th August 1777. A recollection of Macaulay's essay, and of the date of General Clavering's death, might have saved him from this blunder.

Here I may note that Mrs. Imhoff's maiden name was Marian Apollonia Chapusettin. Francis calls her Madame Chapusettin, and I gather from two letters of Hastings (Gleig, Vol. III, pp. 439-40) that Chapuset† was the name of a nephew of Mrs. Hastings for whom Colonel Toone got a cadetship of cavalry. From a letter at p. 387 of the same volume, we learn that Mrs. Hastings was visited in 1803 by her mother : "She leaves me to-day, writes Hastings, with her venerable mother, who purposed, as soon as she has got passports and a conveyance, to return to her own very distant home. This will be to both a most afflicting period." The words "very distant home" and the use of the plural 'passports' are some confirmation of the Archangel story. In the same

* Macaulay's statement that Imhoff carried home with him the means of buying an estate in Saxony comes from the same note by the translator of the *Sair*, to which he was indebted for the remark about Mrs. Hastings' birth-place. (*Sair*, vol. ii, 476 note.)

† The name seems to have been shortened from Chapusettin.

letter (p. 388) Hastings refers to his and Mrs. Hastings' going up to town to get passports for Madame Chapusettin, evidently meaning thereby Mrs. Hastings' mother. The fact of Mrs. Hastings' name being Marian Apollonia appears from a deed of sale dated 10th May 1785 and preserved in the Hastings' MSS. It is a conveyance, in which Mrs. Hastings took part, of 50 bighas of land at Alipore to a Mr. H. G. Honeycomb for sikka Rs. 7,500.

A small book was published at the Oriental Press, Calcutta, in 1833, called *Memoirs of the Right Hon'ble Warren Hastings*. It contains some interesting information and letters. One thing mentioned is, that Hastings gave evidence before the House of Commons in 1766. In a letter dated Daylesford, 23rd July 1803, Hastings writes—"Mrs. Hastings and her mother arrived at Daylesford last Tuesday night after a journey of seventeen days, with an east-wind blowing their own dust after them the whole way. Mrs. Chapusettin is 77 years of age, and does not look younger, but her strength and activity are astonishing, and her cheerfulness beyond all example, though it is put to a severe trial; not a soul but her daughter being able to exchange a word with her."

This last sentence indicates that Mrs. Chapusettin's native tongue was not a well-known language such as French.

If she was 77 in 1803, she could only have been 51 in 1777, when her daughter married Hastings. The latter, therefore, could not have been over 40 then, as maliciously stated by Francis.

The same little book contains a letter from Mrs. Hastings, written in foreigner's English.

The record of Hastings' marriage is in St. John's Church. I am indebted to Dr. Busteed for the information that the 8th August was the marriage day.

Appendix C.

"The Lucknow Affidavits."

It appears from Sir Elijah Impey's own account of the matter (Stephen, II, 261-2) that his chief motive for going to Lucknow was to urge Middleton, the Resident, "to see the treaty of Chunar carried into execution." Hastings, it seems, was apprehensive that the mildness of Middleton's temper would prevent him from putting sufficient pressure on the Nawab to compel him to ill-treat

his mother and grandmother! How little ground there was for this apprehension, or how well he was schooled by Impey, is shown by Middleton's letter of January 20th, 1782, to the British officer who had charge of the Begam's servants, and by the still more famous, or infamous, letter written by the Assistant Resident, and which is quoted in Macaulay's essay. I do not think Impey's explanation improves matters. It might conceivably be the business of a Chief Justice to take the affidavits of British officers in Lucknow when they could hardly take them before one another, and there was no other legal authority available; but what had the Chief Justice to do with preaching severity against unhappy women? The task required of them was so odious, that neither Middleton nor the Nawab, neither the Christian nor the Muhammedan, liked to undertake it, and so the Chief Justice of the Supreme Court goes post from Chunar to Lucknow "with great expedition, travelling day and night" in order to keep them up to the mark. Sir J. S.'s defence of this episode in Impey's career seems to me lame in the extreme. He says (II, 267) that Impey was "at the very worst a little officious," but this is only another way of putting Macaulay's view that he intruded himself into a business entirely alien from all his official duties—words which are included in a passage described by Sir J. S. as one in which "every word is either incorrect or a proof of ignorance." Impey went to Lucknow a few months after he had become Judge of the Company's Court, and Macaulay is, therefore, justified in saying (in the passage above referred to) that he had been recently hired. His conclusion seems equally just, that Impey's object in undertaking so long a journey was "that he might give, in an irregular manner, that sanction, which in a regular manner he could not give, to the crimes of those who had recently hired him." We know from Hastings' Narrative (54) that the suggestion of taking affidavits came from Impey.

Sir J. Stephen says (II, 269) that he will shortly notice Macaulay's mistakes, but I think he introduces several of his own in the attempt. (1) He says: "Of the 43 affidavits (grouped by him as the "Lucknow affidavits") 10 only mention the Begams, and that slightly and by hearsay," and that "the contents of the affidavits strongly corroborate Impey's account of the reason why they were sworn. Their main subject is the affair of Cheyte Singh and the operations against

him. The Begams are referred to slightly and incidentally." How does Sir J. S. know that all the affidavits taken by Impey in Lucknow were published by Hastings in the Narrative? It is one of the insurrection in Benares and of the transactions of the Governor-General in that district. It is not a narrative of the proceedings against the Begams or their servants, and it was begun at Chunar, September 1st, 1781, that is, some two months before Impey joined Hastings. It is true that the Appendix to the Narrative contains affidavits sworn before Impey in November and December 1781, but no one of them states the place where it was taken, and there is no allusion in the Narrative or Appendix to Impey's visit to Lucknow. It seems to me that the fact of the visit was carefully suppressed.

(2) Sir J. S.'s remark that only 10 affidavits mention the Begams is altogether misleading. He says that there are 43 in all (I count only 42 sworn before Impey), and appears to wish his readers to infer that only some fourth part therefore of the "Lucknow affidavits" mentions the Begams. He has, however, omitted to notice, or at least to tell us, that more than half of the affidavits which he has included under the title of "Lucknow affidavits" are not Lucknow affidavits at all. They are affidavits about affairs in Benares, &c., and must have been taken by Impey at Benares, Chunar, and Baxar. Their dates show that they were not taken at Lucknow, for Impey was there only three days, as Sir J. S., quoting Impey, tells us. (II, 262.) The 26th and 27th November must have been two of these three days, for on them Middleton, Hannay, and other officers stationed at Lucknow or in Oude made their affidavits. It was also stated by Impey in his evidence on Hastings' trial, that he arrived at Lucknow on 25th November. He left it on the 29th idem, so that he was at Lucknow three or four days. It follows that the affidavits made on November 12th and in December cannot have been taken by Impey during his three days' visit to Lucknow, and this is borne out by a consideration of who the deponents were. The old Rani Gulab Koer, the widow of Balwant Singh, certainly did not go to Lucknow to make her affidavit, nor is it likely that Blair would leave his command at Chunar, or Eaton his at Buxar, to go and depose at Lucknow about matters which had nothing to do with Oude. This is the less likely, because their stations were on Sir Elijah's route to and from Lucknow.

(3) The total number of affidavits published in Hastings' Appendix as sworn before Impey is 36 (excluding six by interpreters). Of these, 17 were sworn on the 26th and 27th November. Five of the 17 were by British officers in the service of the Vizier, and I conclude from this and from their dates, that they were taken at Lucknow. Of the 17, 11 mention the Begams (Sir J. S. erroneously says "10) and their servants, and in several instances as if it were a main object to inculpate them. This is the case with the affidavits of the English officers which were, I suppose, the most important, and which (as I have already noted) could hardly have been taken except by some outside English official. The statements concerning the Begams are certainly, for the most part, hearsay, but this does not appear to have made them unsatisfactory to Hastings, who writes that he has "reason to be satisfied with the weight of the evidence he has obtained." The 17 affidavits published by Hastings, of which five are by Englishmen, cannot be the "great multitude" to which Impey referred in his evidence. (Stephon, II, 262.) Ten natives would not make a crowd, and there were but 10 native deponents. (One made three depositions.*.) I therefore conclude that Impey took in Lucknow many affidavits which are not in the Appendix. This view is supported by Mr. Impey's "Memoirs," where mention is made of an affidavit by a Captain Wade, which is not given by Hastings.

(4) Sir J. S. says that Macaulay "substituted a false premiss for one which was half true, in order to suggest a conclusion wholly false, namely, that Impey was unable to read the affidavits." This is strong language, and I do not believe it justifiable. The only evidence of falsity given by Sir J. Stephen is, that Macfarlane states that Impey knew Persian, but Sir James should know that a man may have a good knowledge of Persian and yet not be able to read the written character. Mountstuart Elphinstone knew Persian, but could not read the written character. (History of India, 479.) I have met with no evidence that Impey was able to read a Persian MS., and it is highly improbable that he could do so. Macaulay's

* Sheridan was very sarcastic about this deponent. "He had sworn once,—then, again—and made nothing of it; then comes he with another, and swears a third time—and in company does better. Single-handed he can do nothing; but succeeds by platoon swearing and volleys of oaths."

remark that Impey could not read the affidavits may thus be perfectly justifiable..

(5) Another line of defence taken by Sir J. S. is, that there was no necessity for Impey's reading the affidavits or knowing anything about them. This is, I think, a singular defence. Granting that a Commissioner need not know anything about the contents of an affidavit, that he need not inquire if the deponent understands it or the language in which it is written, why did Impey travel to Lucknow to do clerks' work ?* If Middleton or Flannay could have done it as well or indeed better, for they had local knowledge, what was the reason for the appearance of the Chief Justice on the scene as a Commissioner ? Sir J. S.'s remark that the Chief Justice's attestation did not make the affidavits legally any better, smacks of the mere practising lawyer, a character for which Lord Macaulay once said that he had a profound contempt. Who thought of legality in the matter ? Hastings was not seeking for legality ; he wanted a screen for his acts, and he found it in the Chief Justico whom he had lately hired for £8,000 a year.

(6) Macaulay says that Impey acted altogether out of his jurisdiction. Sir J. S. says : this is "not quite correct.". Does he mean that Impey had jurisdiction ?

(7) Impey did not himself always hold the view contended for by Sir J. S. that the taking of an affidavit was an affair of no importance. In the decision on the claim of Radha Charan to the privileges of an ambassador, after saying that Radha Charan's affidavit was scandalous and flagitious, he added (1129)—"If I again see an affidavit of this nature, sworn by a native, we will inquire who drew the affidavit, and the Court will animadvert most severely upon him : it is not to be endured, that the consciences of the natives, swearing in a foreign language, should be thus ensnared." The affidavit in question was that sworn before Mr. Justice Hydro (1108), and which is shown by another (1142), sworn before Impey, to have been drawn by Farrer and Jarret. Impey's language implies that he considered it his duty to comprehend affidavits.

There is a palpable inconsistency in Sir J. S.'s line of argument. He defends Impey on the ground of his willingness to take responsibility, and to help the Governor-General 'in a difficulty, but if the

* See "Pickwick" for a graphic description of how clerks take affidavits.

taking of affidavits was a mere form, and Impey did nothing which a clerk could not do, where is his merit? Admittedly he went out of his way—he was “officious,” to use Sir J. S.’s own word, and the only way in which he can be justified is by showing that he did something really important. He cannot be vindicated on the ground that he was actuated by a courageous public spirit to take responsibility and to help the Governor-General, and also on the ground that what he did was of no consequence.*

Appendix D.

*Extract from “A Letter to Edmund Burke, Esq.”
(pp. 59 to 68.) (Price.) 1782.*

“If I swerve in the least from the line of truth in relating the following circumstances, there are two men at your elbow that can, and I hope will, call me to order; not merely by a private and silent negative nod, or expressive shrug to the members at your own table, or in your own house, for that shall not serve them; it must be by an open, fair, and candid refutation of my assertions, (if they dislike them,) and that I may not be mistaken, one of the persons whom I mean was superintendent of the cutcherry, or country court of justice, at or about the time the Judges arrived, and the other came with the majority to Calcutta, and took the lead in defending the Rajah on his trial; they were both in the secret, and had the latter of them not been well paid for his services, no opportunity could have offered for showing his gratitude in the

* Sheridan wittingly compares and contrasts Impey with the Ghost in Hamlet:

“When, on the 28th November, he (Impey) was busied at Lucknow on that honourable business, and when three days after he was found at Chunar, at the distance of 200 miles, prompting his instruments, and like Hamlet’s Ghost exclaiming, ‘Swear’—his progress on that occasion was so whimsically sudden, when contrasted with the gravity of his employ, that an observer would be tempted to quote again from the same scene, “Ha! Old Truepenny, canst thou mole so fast i’ the ground.” Here the comparison ceased—for when Sir Elijah made his visit to Lucknow ‘to whet the almost blunted purpose’ of the Nawab, his language was wholly different from that of the Poet,—it would have been much against his purpose to have said

“Taint not thy mind, nor let thy soul contrive
Against thy mother aught.”

manner he now does, to his friend Mr. Francis in attempting to revive *the good old cause*, at the expense of an injured and absent man, and that in a manner not very unsimilar to the means used for the same purpose at Bengal.

"In the year 1769, an eminent banker, who was an inhabitant of Calcutta, in Bengal, died, and left his estate to be divided in certain proportions amongst his family, and in a vast number of legacies, to particular people and to charitable uses. His two nephews were declared in the will to be the trustees of the estate, but he ordered that a particular friend of his should direct all the concerns in settling his affairs, agreeable to a power-of-attorney, which in his lifetime he had given to that friend, jointly with a certain broker who had always transacted the business of his house; but this last (the broker) was to act, or not to act, after his death, just as his confidential friend should determine.

"At the time of the banker's death, the East India Company owed him a sum of money amounting to two hundred thousand rupees. On the receipt of this money from the Governor and Council in a great measure depended the fulfilling of his bequests, and he had recommended to the care of Maharajah Nundcomar Bahador, his patron, the office of soliciting the payment of the money from the Company's agents in behalf of his family. The payment was made in a number of the Company's notes or bonds, drawn for small sums to facilitate the negotiation of them. The bonds were carried to the Rajah by one of the trustees or nephews and the confidential friend or acting administrator to the estate of the deceased banker, and left in possession of Nundcomar."

"Some little time after, the same nephew and friend, accompanied by the broker (who was now called upon to act agreeable to the power-of-attorney and desire of the deceased in his will) went together to the Rajah to obtain the bonds in order to settle the affairs of the banker's estate. At this meeting, the Rajah produced one bond of the deceased banker's to him for 10,000 rupees, another for 48,000 rupees, and two other papers or bills of his for 35,000 rupees for durbar charges—which expression is always understood to mean money given to men in power in return for favours obtained by means of their intercession, and by which the Rajah, agreeable to his constant practice, insinuated that he had given to the Governor 35,000 rupees to procure the pay-

ment of the money. When he had separated as many of the bonds from the number received as amounted to the three sums above-mentioned, and delivered the remaining Company's bonds, and the cancelled bonds and bills, to the executors as vouchers for them, he desired that the eight Company's bonds, which he had reserved as due to himself on account, might be indorsed over to him. It was necessary that the deceased banker's book-keeper should do this; and the trustee, the friend, and the broker, when they took leave of the Rajah, carried with them one of his servants to see it done. It was done, and the bonds re-delivered to the servant of the Rajah. To this stage of the business nothing appeared; the book-keeper obeyed the positive orders of his late master's particular friend and executor in indorsing the eight Company's bonds over to the Rajah, but not without making the following exclamation: 'Good God! what has all this money been paid to the Rajah for; my master owed him but ten thousand rupees.'

" This matter did not make much noise at the time, and when one of the legatees wanted to bring the Rajah to account, the friend or manager of the estate, and the wife of the deceased banker, always interposed, by saying, why should we, for a little money, disturb the quiet of the patron and friend of our dead master; this in the wife, who was to enjoy the fourth of the neat estate, was very disinterested. But people who know the piety and virtue of a great majority of Hindoo women will not wonder at such an exertion of those god-like attributes in an Asiatic widow. But the confidential friend of the banker does not appear to have credit given him for being actuated by such noble motives as the widow; for when she had retired to spend the remainder of her days into the interior part of the country, some of the legatees began again to disturb the Rajah, and complaint was made in the Mayor's Court that the acting executor of the dead banker had conveyed away some necessary papers belonging to the estate, and this brought on him the suspicion that he had been in league with the Rajah to defraud the estate of his unsuspicious dead master.

" Heavy complaints were made of this business, and a suit commenced against Nundcomar in the country courts; a spirited young gentleman, then president of the cutcherry, sent and arrested the Rajah for contempt of his court, and without paying any regard to the solicitations of the Governor of Bengal for the time being (not

by committing to disgrace a nobleman and a 'Bramin of his high order), he sent him to the common prison belonging to his court, there to lie '*with rogues forlorn, on wet and musty straw.*'

" This commitment being only for contempt, the Rajah by making, proper concessions, got out again and the suit went on.—*I pray the reader not to forget the above circumstance.*

" Some time in 1771 or 1772, the acting administrator to the estate of the banker, and supposed private friend of the Rajah, died, and Nundcomar, who, with his assistance, had kept proof of his forgery from appearing against him in the country courts, became again in danger. Our Mayor's Court, from the nature of their charter, could not take cognizance of civil suits between natives; this, and their idea that a man who had possessed himself of other people's money in the manner the Rajah had could only be obliged to return it, is supposed to have prevented an earlier appeal to our criminal law. By dexterous management, it was represented to the Mayor's Court that the only surviving executor to the estate of the banker, then at Calcutta, was incapable both in body and mind to go on to manage his uncle's estate, and an order was obtained that all papers relative thereto should be delivered into the hands of Mr. William Magee, the Register of the Mayor's Court. With this man the Rajah was said to have made interest for during his lifetime. Proof, as heretofore, was held back from the country courts. This was one opinion, but there was another, Sir, which bore hard on your little friend, the cutcherry-man.* He best knows how it came about that no decree passed for or against the Rajah in his court whilst he presided, and from some circumstances of his conduct, which came out afterwards, we are at liberty to suppose, what we please, as to the easy compliances of his temper in the capacity of a Judge. If he says these are calumnious insinuations, I will admit that they are but hints to times past (Damn'd broad ones to be sure), but he knows that the man who makes them is at hand, and will be produced if he pleases to call for him, *being always at home*. At the same time let him advert to the business he is about, and recollect the abominable insinuations entered upon record against the honour of a man on the other side of the world, whose amiable disposition and integrity of soul he knows, but hates him for them as much as Mr. Francis does. There was not a man in Calcutta who

* Boughton-Rous.

did not believe that the Rajah had forged the papers, with the assistance of which, and the connivance of the confidential friend and acting administrator, he had defrauded the heirs-at-law and the legatees of the banker's estate. It was also strongly believed that Mr. Magee had during his registership destroyed them. But in about three months after the arrival of the Judges, and the establishment of the Supreme Court, Magee also died.

"At this time a set of hungry wolves, of dastardly, selfish lawyers, had been let loose on the Settlement, and they prowled about into every corner in quest of prey. They all knew of this story of the Rajah's, and each was eager to catch hold of the vouchers (if they existed) to sweat this original Nabob. Some in your House are tolerable copies of this great original machiavellian hero, but they are but copies.*

"Not to tease you further, Sir, with hard outlandish names, I shall only observe that Pudmohun Doss was the name of the friend and the acting executor to settle the affairs, and the man who through fear, fraud, or on some unknown principle, permitted the Rajah to cheat the estate of his friend, and Gungabessen was the nephew or one of the trustees appointed by the will. This last was the person whom the Mayor's Court set on side, as insufficient from debility of body and mind to conduct his own affairs, and gave the papers to Magee.

"Farrer, the lawyer, you see, brings him on the stage again as a capable man, and prays the court to order him the papers of his uncle's estate. On the future trial, however, it appeared that he was so extremely ill of a disorder which had hung on him for a long time, that the surgeons declared, on oath, an attempt to bring him into court might cause his death.

"After all, neither Farrer nor Brix could obtain the vouchers; for the truth was, Magee had not destroyed the forged bond and the two fictitious bills for durbar charges, but only put them from amongst the other papers belonging to the banker's estate into a box containing some very dirty and old records of the court.

"Whilst every lawyer in Calcutta was endeavouring to come in for part of the spoil, either in attacking or defending the Rajah, it came to be known that the vouchers had not been destroyed.

"I am not quite certain how the truth came to light, but I have heard, that a black writer who had acted in the Mayor's Court under

* Here Price gives Farrer's application of 24th March 1775.

the Register Magee, gave a hint to the Company's lawyer in what part of the Register's Office the papers were to be found, and he flew with them to the sick nephew, or trustee of the banker's estate, who at that time lived in the house of the broker so often mentioned, and who, by virtue of his joint power-of-attorney, had acted in the affairs of the estate since the death of the banker's friend and principal executor. A meeting of all the legatees on the spot, together with the book-keeper, was called, and the whole being convinced that the Rajah had cheated the estate by means of false vouchers now in their possession of so capital a sum as eighty odd thousand rupees, which, if recovered, was to be divided amongst them ; and the broker having in view 5 per cent on the sum if received by virtue of his power-of-attorney, it was unanimously agreed by the book-keeper, the legatees present, and the agents for absent legatees, that the broker should prosecute for the good of the whole.

"The wife and one of the nephews of the dead banker being absent, and the friend dead, the Rajah had not one well-wisher at this general meeting but the sick nephew; and he by the warm revenge of the book-keeper who had served the family his whole life, the avaricious views of the broker and legatees, was hurried on against his will, it was said, to admit of the prosecution. The papers were produced, the fact was sworn to before one of the Judges (as Acting Justice of the Peace for the day), and the Rajah committed to the county gaoL

This whole affair was so sudden, that not one of the majority nor of the minority knew anything of the matter until the Rajah was lodged in prison : the Deputy Sheriff did offer to bail him, but the sitting Justice said it was a criminal affair, and bail could not be admitted.

"Now, Sir, let us pause a little to examine your assertions of the matter being considered by the country people as a political one. I shall admit that neither the nephew, the book-keeper, the legatees, or the broker, looked further than to the disgrace of the Rajah and the recovery of the money. The Company's lawyer had certainly a view to the obtaining a good sum from the Rajah, on the idea that he should be able to quash the evidence. And it is not unlikely but he might have effected it had he only had Hindoos to deal with, who are averse to the spilling of blood, and in particular that of a Bramin ; but he had snatched the prey out of

competitors' hands, who were as greedy and knowing as himself, and who, spirited up by the majority, joined against him in support of the Rajah, and undertook his defence.

"It is very singular that the Judge who committed the Rajah was on but indifferent terms with Mr. Hastings; no enmity between the men themselves. It was a lady war, which sometimes will engage and draw aside the attentions of the wisest of mankind. I mention this only because it is confidently said that the Justice acted in obedience to the wishes of the Governor. If he did, it was a proof his being a bad courtier; for the loaves and fishes lay on the other side, and he could not take Mr. Hastings' opinion, for the Governor knew it not himself until the next morning, when he said to the persons near him, 'I am sorry for it, the refusing bail—though the act of a gentleman, who must know his duty in such cases, will be laid to me.' He guessed right, much abuse was heaped on both, it was called a concerted scheme to destroy the honour of a man of rank, and make his life miserable by the forfeit of his caste or religion from the contamination he would receive by his being in prison one moment. What had been done by a factor in the Company's service (as noted above) with great impunity, little noise, and no damage to the Rajah, was now the most daring piece of political temerity in the King's Judges, who all agreed the next day not to admit of bail, though every indulgence was ordered to be shown the prisoner by the officers of justice."

NOTE.—Price was a Welshman, and a man of low origin and little education. He was bitter against Francis, because the latter exposed his jobs. In Francis' Journal, we find the entry under date 24th July 1778, "*Royal Charlotte*, a ship belonging to Croftes, taken up, and the *Resolution* put under Joseph Price at an immoderate expense—a most infamous job." Price was apparently one of Hastings' hired pamphleteers, but he was surely a bad bargain. A correspondent of the London *Courant* says that Price in one of his pamphlets compares "Hastings to Jesus Christ, and himself to John the Baptist." I have not, however, been able to find the passage in the letters of a Free merchant. Perhaps it was struck out in the second edition.

Gholam Husein's Account of Nanda Kumar and of the Trial.

NANDA KUMAR was the Diwan of the Nawab of Murshidabad, and served as such with great ability and honour even during the reign of Mir Jafar. When, after the attack of Azimabad,

Sujah-ad-Daula and (Mir Qasim) *Alijah* were with the Emperor at Buxar, Mir Jafar went to Calcutta to plead his own cause before the Council. *Shams-ad-Daula*,* being aware of Mir Jafar's levity and want of experience in State affairs, felt reluctant to send him back to Murshidabad, that he might not again oppress the poor and helpless people there by his haughtiness and ill-behaviour towards them. He, therefore, after having trusted to the hands of the Council the matter of the Nawab, did not at all do anything further for him; but retaining the services of Nanda Kumar as Diwan, in which post he had so long served with much credit and respect, he declined to listen to the importunities of Mir Jafar to send him back to Murshidabad. Shams-ad-Daula, who knew fully well that Nanda Kumar was an ill-natured man, and that Mir Jafar at his instigation put to trouble and dishonour many men holding high and respectable positions, had had reason to suspect that he would do the same again. He, however, permitted the Nawab to repair to the capital (Murshidabad) with much honour, but detained Nanda Kumar in Calcutta. After his arrival at Murshidabad, Mir Jafar by letters and other means conciliated the Members of the Council. With the aid of the Members, Shams-ad-Daula thought it proper to send Nanda Kumar back to Murshidabad, and wrote a book in which he fully delineated the faults and ill-doings of Nanda Kumar, and kept it with him beautifully bound. Nanda Kumar soon after he had reached the metropolis (Murshidabad), so far overstepped the legitimate bounds of his power, that he went even the length of endeavouring to procure the dismissal of Mahomed Raza Khan, who was son-in-law of Ata-ullah Khan and Rabia Begam, and who was Naib Nizamat at Jahangirnagar (Dacca); and Mir Jafar, at his instigation, dismissed Raza Khan from his post and put him in prison, but afraid of the English functionaries who then resided at Kasimbazar (near Murshidabad), soon set him at liberty. Mir Jafar, who continued for some time seriously ill, died on the 4th Saban 1178 Hijri. It is said that Nanda Kumar caused water to be fetched from the temple of Kristeswari, and poured it into the throat of Mir Jafar while lying at the point of death. Mir Jafar died immediately after.

* The sun of the State, the native name for Vansittart.

After the death of Mir Jafar, Nanda Kumar continued as before, Diwan of the Sooba of Bengal under Najm-ad-Daula. A few days after he was summoned to Calcutta to answer for the trouble he had given to Shams-ad-Daula, the Governor; but still his services were not dispensed with for that. Shams-ad-Daula painted in glowing colours his faults in a book, and gave it to his brother, Hushiarjung (George Vansittart), with instructions that when Lord Clive would sit in the Council, he would read it over to him in the presence of all the Members. It was, therefore, that the Members did not allow Nanda Kumar to go out of Calcutta. When Lord Clive came and took his seat at the head of the Council Board, Hushiarjung perused to him and the Members word per word the book which, as we have already stated, contained a full and graphic description of the faults and ill-doings of Nanda Kumar. Lord Clive, instead of being hard upon him, only relieved him of his duty as Diwan, but kept him employed in service at Calcutta without the liberty to go beyond the limits of the town.

When Mohamed Raza Mazafar Jung was in Calcutta to answer for his conduct before the Council, as well as with a view to be reinstated in his office, Ali Ibrahim Khan took much interest for him and stood by him as a good friend. Though Nanda Kumar was very powerful and full of craft, Ali Ibrahim not being in the least afraid of him had the courage to answer him.*

At the time that Mohamed Raza stayed at Calcutta in expectation of being re-appointed to his office, General Clavering, Colonel Monson, and Mr. Francis were in the service of the Company and were in union with one another. The three gentlemen—General Clavering, Col. Monson, and Mr. Francis—formed a league among themselves in the hope that should General Clavering succeed in being appointed Governor, Col. Monson would become the Commander-in-Chief of the English forces, and Mr. Francis a General

* This indicates the source of Gholam Husein's dislike to Nanda Kumar. Ali Ibrahim was the man whom Hastings made Magistrate of Benares, and Gholam Husein was his friend and subordinate. No doubt the passage shows that he was angry with Nanda Kumar for accusing Mohamed Raza, but this does not alter the fact that he expresses a very bad opinion of the latter officer. It is worth bearing in mind that Mohamed Raza eventually joined the majority against Hastings, and was deprived of his office in consequence. Gholam Husein censures him for his defection.

under him. As Nanda Kumar was not in favour with Lord Clive, Shams-ad-Daula, and Hastings, who gave no countenance to him, he was treated with much respect by General Clavering and Col. Monson and Mr. Francia. Many covetous and quarrelsome persons, who cherished a desire of being held in esteem, tried with the help of Nanda Kumar to ingratiate themselves with those three gentlemen. At this time a full inquiry into the private character and doings of Hastings was set on foot. Of those who conducted the inquiry, one who had the power of Governor and Mr. Barwell were with one accord on the side of the Governor, and the other two mostly espoused the cause of the General. For this reason there arose a hostility between the two parties, and this circumstance caused all this to be done much to the advantage of the General.

The Governor who was a man of great intelligence and vast and sound knowledge, and who never shut his eyes against what was proper and beneficial to all, now endeavoured to remedy the evil occasioned by the faults of the functionaries, by avenging himself upon them, and especially upon the General by bringing him to shame and humiliation, inasmuch as he had of all others been the bitterest object of his grudge. It was the adverse party whose neglect of his interest had much affected his innocence and good name. He thought that his object would be more easily and successfully realized, if he could only first bring to chastisement Nanda Kumar, who was not only imprudent but was also of a very dishonest and unscrupulous character. And thus, he thought, it would be an easy matter to expose the faults and shortcomings of the General who so strenuously supported him. He passed a long time in receiving the defence which the General made for his conduct and thus succeeded in establishing his own innocence, and substantiating the unfair dealings of his enemies.

The Trial.

At length the charges brought against Nanda Kumar were proved. Among them there was one that that Hindoo (Nanda Kumar) forged the signatures of others, and had in his possession counterfeited seals resembling those of the people who had seals of their own bearing their names. He would fabricate such bonds, letters, and other documents as were needed by the people who wanted to use them

against others whose names they mentioned to him. Pursuing this most illegal and dishonest trade, he brought to utter ruin and poverty many well-to-do men. Among the bonds there was found one which he had got up bearing the seal of Bolaqi Das Seth, who had, for a long time, been regarded as a very honest and trustworthy gentleman during the reign of Mir Qasim, and had been so before as a banker. Nanda Kumar, on the strength of that bond, drew the amount covered by it from the Company's treasury, and appropriated it all to himself. A grand jury was formed to hold a trial of Nanda Kumar on these and other charges. The jury consisted of twelve trusty Englishmen. The rule then observed as regards the jury system was that if the accused challenged it twice, the jury would be twice changed; but on the third occasion, if he still did so, the jury remained unchanged, even in spite of the prisoner's reluctance to be tried by it.* These twelve jurors were to return their verdict. Until the sentence was passed, no outsiders were at liberty to have any access to them or communicate with them in any other way, lest anybody might induce them to change their opinion. This grand jury, in accordance with the rule already stated, was twice changed, and the trial was long protracted. At last Nanda Kumar was found guilty, and it was held that he deserved death by hanging. It generally happens that though he who has an evil heart and who is oppressive and proud, and who does mischief to almost all persons, does good to two or three men only and supports their cause, yet he (Nanda Kumar) never neglected to satisfy his grudge against those who, much devoted to him as they were, failed either through disease or other cause to serve him †. Be that as it may, a sentence of death was passed upon him. The General gave him hopes that none would be able to do him any harm, and that he should not be afraid or should despair of life even when he would be carried to the foot of the scaffold, adding too that he would leave no stone unturned to make the Governor be found guilty of the offences laid to his charge. The man sentenced to die on the gallows left no means untried to

* This is an incorrect account of a prisoner's power of challenge. In cases of felony, a prisoner can challenge peremptorily twenty jurymen. Nanda Kumar challenged eighteen.

† This passage is differently rendered by Haji Mastapha. It is very obscure in the original.

substantiate the charges brought against the Governor with whom he was in open hostility, and neglected to think that it was worth his while to take care of his wealth and his position in society. Fully confident in the truth of what the General had said to him, and at his instance he brought to light many facts in connection with the conduct of the Governor, and left nothing undone which would have put him to all sorts of trouble and indignity. The Governor, having managed to acquit himself of every offence he was charged with, made it recoil doubly upon his enemy, and had him pronounced guilty. A voluminous book was written in English on the questions and answers put and made by these two persons to and by each other, and was bound. Copies of this work were circulated among the Englishmen. At length the sentence was confirmed, and the 7th Jamadi-as-Sáni 1189 Hijri, which was fixed for his death, Nanda Kumar was hanged. It is said that a list of his riches and furniture was prepared and made over to his son and heir, Rajah Guru Dás. It contained the enormous sum of 52 lacs of rupees which he had himself accumulated and the precious things of that value. When the seals which Nanda Kumar had forged bearing the names of various persons were discovered and got out of his chest, his wily and infernal art and disgraceful act were laid bare before the eyes of the public.

NOTE :—I am indebted for this translation from the *Sair-al-Matakkirin* to Babu Parmánand Mitra, the Record-keeper of the Judge's Court, Faridpur.

Note on Genealogy.

NANDA KUMAR was born at Bhadrapúr, which is now in Birbhum. I think that the date 1722 must be wrong, as this would make Nanda Kumar only 53 at time of his death. Apparently he was nearly 70. Kamáladdin described himself in one deposition in the conspiracy case (Cadell's Ed., p. 8) as being fifty years of age, and elsewhere represented himself as a good deal younger than Nanda Kumar, for he said that Nanda Kumar was the friend of his father and grandfather, and had protected him ever since he (Kamál) was ten years old.

The family of Nanda Kumar is now represented by Kumar Durga Nath, who is descended from Jagat Chandra Bannarji. It is he who has had the genealogical tree drawn up after consulting his records

and the *Bháts* of the Ráṛhi Brahmans. The tree shows the relationship with Sambhu Nath. It does not mention which daughter of Nanda Kumar was married to Rádha Charan Rai. Nanda Kumar's Calcutta house was in what is now Beadon Square. A street leading out of the square is still known by the name of Rajah Guru Dás' street.

It appears that Nanda Kumar was not a Brahman of the very highest order. The family of Kasyapa was one of the five which came from Kanauj to Adisur, its representative being, according to one account, Daksha; but Nanda Kumar belonged to one of the Gauna or secondary families of the Kasyapa clan. Daksha had sixteen sons, and the descendants of one of these (Kantúk) were formed into a village or commune called the Pítmündi Gain. Nanda Kumar belonged to the dhabal, i. e., white or pure branch of the Pítmündi section; but this branch is not mentioned, I am told, in the old and authentic books of the Ghataks. I am indebted for the above information to Babu Mohima C. Mozumdar's learned work on the Brahmans of Gour. I also learn from his work (p. 114) that Nanda Kumar was an enemy of Rani Bhowaui, and prevented her getting the management of her zemindaries on the death of her son-in-law, Raghu Nath, in 1158 B. S. (1751-52). She afterwards got the management by the help of her servant, Daya Ram. This account tallies with an early letter of Hastings where he speaks of Nanda Kumar trying to overset Daya Ram.

It is startling to find Babu Prosunno Kumar Tagore asserting in the preface to his translation of the Vivada Chintamani, that Nanda Kumar was not a Bengali by race. I suppose that he confounded him with Amichand, and was too eager to denounce the "ignorance" of Macaulay to be careful of his own accuracy.

In the Goods of Rajah Nanda Kumar (1781-2).

HARE for the petitioner Balgovind, who was a creditor of the deceased. The petitioner had applied for administration, in order to obtain payment to himself of the money which had been paid on the bonds, for the forgery of which Nanda Kumar was hanged in the year 1775.

Davies, A. G., for the caveator, Rajah Guru Dás, objected that it now appeared by affidavit that Guru Dás was the only son of Nanda Kumar, and that he was executed for felony.

Upon a motion to appoint a day to argue the caveat,

Chambers, J., said :—At this distance from England, I think we ought to take care to do nothing that may infringe the right of the Crown. There is no officer of the Crown here to take care of them, or to receive the forfeiture due to the King. We have no authority to do so, but yet I think we must take notice of a fact so notorious as that Nanda Kumar was executed for felony, and the Ecclesiastical Court cannot grant administration of the goods of a man executed for felony.

Hyde, J.—It is open to argument whether the Court may grant administration, and how it shall be brought before the Court that we may take notice of it. It is said, this administration is applied for to obtain payment of the money from the effects of Nanda Kumar, which he had received on the forged Persian bonds, for the publication of which he was hanged. If no person claims on the part of the King, I do not know that we are under any obligation to take notice of the forfeiture. Whoever possesses the goods will be accountable to the King, when any claim is made, whether it be the administrator or the son of the deceased. (No further note appears. From the records it appears that administration was not granted.)

Morton's Decisions of the Supreme Court, pp. 7, 8.

NOTE.—Perhaps it was in reference to this case that Hicky introduced the ghost of Nanda Kumar into a burlesque playbill published by him in June 1781. (*Echoes from Old Calcutta*, 70.)

Appendix F.

Original Petition (Translation) presented by Kamáladdin to Hastings in December 1774.

BANESHWAR GHOSE Yár Mamudar (Qu. Ihtimám-dár, holder of a trust or a deputy), by means of Lala Ajail (Ajib ?) Rai, of certain thika khalaris, preferred a complaint against me for 5,000 mans of salt; in consequence of which the General sent for me, and then referred me and Baneshwar Ghose to Mr. Fowke, that the gentleman might inquire into the cause. In the course of the discussion, Baneshwar Ghose said : "This man has given large presents, and by this means obtained the business of the thika khalaris." Mr. Fowke said to me : "If this be true, and you have given anything to any matsaddi, declare it." I answered that "Baneshwar Ghose had declared what was false; and that I had not made any presents." Mr. Fowke afterwards took down in writing the representations of both parties; and then said : "I perfectly comprehend this cause, and shall relate it to the General, who will decide upon it."

Amended Petition of Kamáladdin drawn up for him at Hastings' house by the latter's munshi, Sherulla Khan.

Petition of KAMÁLADDIN ALI KHAN.

"IN the present year I took al lthe khalaris of salt in the Hijli District in farm from the Company, who were to be furnished with all the salt produced there, at the rate of one hundred sikka rupis per hundred mans. I obtained a patta for the farming of these for four years, and it was ordered that whatever advances had been made by the baiparis (traders) to the malangis (salt-makers) on the salt in the present year should be returned to them, "with an interest of one per cent. per month, in the presence of the said malangis. I conducted the Company's business agreeably to their instructions, but Baneshwar Ghose, in opposition to the orders from the Presence,* refused to receive back his advances on the salt, and preferred a complaint to the General against me for 5,000 mans. The General sent for me, and desired Mr. Fowke to take cognisance

* The Husmír or Presence, i.e., the Government.

of the affair, who questioned me concerning it; I answered that I had taken all the khalaris of salt in farm for four years, and that all the salt produced in them was to be delivered to the Company; that I had in my possession a patta for the passing of them, and that the said Ghose refused to receive back his advances, and demanded the salt. Baneshwar Ghose then said that I had obtained my patta by intrigues of the *darbar*; that Kanta Babu had received his salt, why should not he?

"I replied that Kanta Babu produced an order from the Presence* to permit him to make his salt, and to deliver it himself to the Government; but that some disputes having arisen concerning *batta*,† he had not yet taken the salt. Mr. Fowke then said to me, you have managed this business by the method of intrigue; Baneshwar Ghose made advances on the salt from the beginning of Aswin (September) to the end of Phalgun (February) and made his salt, which you have oppressively taken from him; declare truly what intrigues you made use of to manage this affair, how much you gave to the gentlemen, and how much to the matsaddis (clerks), declare without reserve, which you will find for your advantage; if you do not, you shall be punished. I answered I am surprised at such a question; I am a poor farmer, who receive advances from the Company, and provide them salt; I have not given anything to any one; the gentlemen would not even accept of a *nazzar*. Ghose then said that I had spoken falsely; that I had expended large sums in procuring the patta, and had oppressed him. Mr. Fowke then said, you have not given anything to any one, will you take your oath to this? I replied, if it is thought necessary on my examination, I will undoubtedly take my oath to it. He afterwards took a copy of my patta and deposition in English. This kind of examination was repeated several days. Yesterday Mr. Fowke told me that he had perfectly understood the whole affair, and that it must be determined before the General.

"Protector of the poor, I am a poor farmer, and have conducted the Goverment business conformably to their orders; but on this

* Here is an admission that Kanta, the Governor's banyan, was treated with exceptional favour.

† *Batta* means exchange, but I think that it is a clerical error for *basket*. The dispute was about the weighments.

occasion a blemish is thrown on my reputation, and a loss will accrue to the Company.

"As I have no protector but you, it was necessary to make this representation to you."

This petition was laid before the Board by Hastings on 13th December 1774, with a minute, and it was "agreed that copies of the two letters (there was one also from the Rai Rayan) be transmitted to Mr. Fowke by the Secretary, and his answer required to them."

"The Governor moves that the General be desired to withdraw the trust which he has delegated to Mr. Fowke of making any kind of inquiry into complaints, excepting in the General's presence, and as an interpreter to propound questions dictated to him by the General, in case the Council shall choose to employ him in that capacity.

"The motion is overruled by the majority, the Governor-General dissenting to the resolution, and Mr. Francis giving his dissent to the proposition for reasons which he will deliver in writing."

Fowke's Reply, dated 16th December 1774.

GENTLEMEN,—Mr. Secretary Sumner has forwarded to me copies of a petition from Kamáladdin Ali Khan, and a representation from the Rai Rayan Rajah Rajballabh, to which my answer is required by your Hon'ble Board, and which I shall dutifully comply with.

The charge of Kamáladdin Ali Khan is loaded with falsities and misrepresentations from beginning to end.

It is false that I ever said he had taken the salt from Baneshwar Ghose oppressively.

It is false that I ever said the following words, or any of like import: "Declare truly what intrigues you made use of to manage this affair; how much you gave to the gentlemen, and how much to the matsaddis, declare without reserve, which you will find to your advantage; if you do not, you shall be punished.

It is false that Kamáladdin Ali Khan ever said within my hearing that the gentlemen will not even accept of a *nazzar*.

It is false that Baneshwar Ghose ever said within my hearing that Kamáladdin Ali Khan had expended large sums in procuring the patta.

"It is false that I ever said the affair should be determined before the gentlemen Protector of the poor.*

It is false that copies were ever taken of the two pattas which were shown to me. I took the measure of the writing of one, being five feet and a half long and five inches broad, and I had no inclination to dip further into it than to make myself master of two phrases, *thika* and *taunkunjee*,† which I was before unacquainted with.

It is false that I ever put any such question to Kamáladdin Khan as the following:—

'You have not given anything to anyone, will you make oath to this?'

It is true that I often recommended truth to both parties, and put them in mind that I was not their judge, my office being only that of an interpreter to the petitions.

It is true I did say, after some days' examination of Baneshwar Ghose's petition, that I did perfectly understand the whole affair; which I uttered with great satisfaction, having been in a mist for several days, owing to the sudden shift in the terms of the contract, and the many transfers which were made of the khaláris by Kamáladdin Khan, which confuses the subject very much; it is no wonder therefore that I should be happy to find a little day-light at last.

I have now given the whole of what passed between me and Kamáladdin Khan on the petition of Baneshwar Ghose, to the very best of my recollection; and if ever this *poor farmer*, as he styles himself, with a farm of Rs. 200 or 300,000 a year, should be heard in his own defence, I trust the reputation of my integrity will support me against the baseness of his calumnies."

Fowke then refers to the Rai Rayan's representation and concludes—

"I beg leave to observe further that I many times told Kamál that he was at his own liberty to attend or not. I had no power over him; it was his own affair, not mine.

The many obstacles the natives meet with in preferring their complaints in a language they do not understand, made me cheerfully enter upon an office which must help to clear the avenues of justice; and, I have done it most disinterestedly, without fee or

* There is some mistake here. The words "Protector of the poor" refer to another sentence in Kamál's petition.

† Thánkhanjá, 'a muster-roll of malangis or other workmen.'—Wilson, p. 518.

reward. If any person should suppose me actuated by factious motives, he does me a foul wrong, as I have always had a contempt for a mutineer, whether in state or army ; and I hope, whilst I live under your protection, to prove myself, with great respect and submission,

GENTLEMEN,

Your most obedient

and most humble servant,

JOSEPH FOWKE."

He also sent accounts of the interview by two of his clerks.

On 23rd December he made a declaration on oath before Clavering that the statements of his letter were true. Similar declarations were made by his own and by his son's munshi.

It was proposed that Kamáladdin should be sent for, but apparently he was not examined.

In the course of these proceedings Hastings recorded a minute that Kamáladdin was not and could not be a banyan, and that his own banyan, Kanta, far from being a partner with Kamáladdin in the thika contract, was the principal sufferer by it, and its greatest opponent. He referred to the proceedings of the Revenue Council of 8th February; and to those of the Calcutta Committee of Revenue of 11th February, 25th March, 1st, 15th, and 25th April, and 6th May (1774), in support of his statement.

In reply, Clavering, on 30th December, recorded that he was always ready to confess his mistakes, and that he found he was in error in calling Kamáladdin a banyan, "as I find him on further inquiry to be a Māsalman, though from the instances I have seen of his several transactions in his thika contracts, he appears to be in effect a banyan, whatever he may be in name. I cannot agree with the Governor-General that any conclusion can be formed that his banyan, Kanta Babu, was not concerned in a collusive contract with Kamáladdin, because they had quarrelled, and Kanta Babu had complained against him ; but be this as it will, it cannot be denied that he was engaged in a contract ; and as his name does not appear as one of the original contractors, I think it must follow that it is a collusive one. I find in the Consultations of the Committee of Revenue, November 10th, 1774, the following order is given to Mr. Roberts :—'Tankhwán (assignment) for mans 5024 of salt granted to Govind Prasad as in part of a *contract* in the name of Kanta Babu, which you will please to comply with.'"

To this Hastings replies : " I must beg leave to add, in explanation of what I have already asserted, that my banyan had no connection and could not have been engaged in any collusion with Kamáldin ; that he had been for some time, I believe for some years, in possession of some of the thika khaláris, which were taken out of his hands and given to Kamáldin, and even the salt which he had manufactured in these khaláris, transferred in like manner, in opposition to the repeated complaints and remonstrances of my banyan. The particulars of this will appear on the proceedings which I have quoted ; I speak only from memory."

THE PETITION SAID TO HAVE BEEN EXTORTED BY FOWKE.

Trial of Joseph Fowke and others. (Howell's State Trials, Vol. XX., Col. 1095.)

Translation No. 1.—" I am desired to give an account of what conversation passed between me and Mr. Fowke : I do here declare, upon the faith of my religion, the truth of this transaction, viz :

Banasser Ghose preferred a complaint against me on account of salt of his Tecka Collaries ; and the cause was referred for examination to Mr. Fowke. After Mr. Fowke, having heard both parties, had dismissed us, I went in the evening to Moonshi Sudder O Deen, Mr. Graham's moonshi, and related to him the conversation that had passed at Mr. Fowke's. Sudder O Deen said, ' I comprehend the affair : it is proper you should relate this to Gunga Govin Sing, Dewan of the Calcutta Committee.' I replied, ' What is the good of relating this to the Dewan ? do you yourself relate to the Dewan whatever you think proper, but pay attention to my advantage and interest : my affairs wear a very severe aspect with respect to administration, and I am in great difficulties.' On the 19th Phagoon, I went to Dewan Govin Sing, and related the conversation to him ; to which he made no reply, but went to the Durbar. On the 20th Phagoon, at 12 o'clock, Moonshi Sudder O Deen sent for me, and told me that the interrogations put to me by Mr. Fowke, and my answer on the subject of the Tecka Collaries of salt, had been related to Mr. Graham by Dewan Govin Sing ; that Mr. Graham, without making any reply, had gone to the Governor and related the whole circumstance to him ; and, returning to his own house, had directed him (Sudder O Deen) to send for me and tell me to write a petition upon this subject, and deliver it to the Governor. In conformity to

what Sudder O Deen had said, I drew out a petition, and shewed it to him : having perused it, he told me to show it to Gunga Govin Sing, and make whatever deductions and additions he should direct me ; and added, ' What I now tell you, is by the direction of Mr. John Graham.' I shewed the petition to Govin Sing, who told me to write it in this manner : that Mr. Fowke, in the business of the Tecka Collaries, had asked me how much I had given as douceurs to the English gentlemen, and how much to the natives in power, threatening me with severe punishment if I did not declare. I replied, that Mr. Fowke did not say so to me ; and if there should be any suspicion of falsehood in the petition, my oath would be required. Gunga Govin answered, ' Go you to Moonshi Sudder O Deen and ask his advice, and I will follow you.' Whilst I was relating this conversation to Sudder O Deen at his house, Gunga Govin came in : after some conversation betwixt them, they told me that I should not have to swear ; and that I need be under no apprehensions on that account. Having no resource, I complied with the Moonshi's and Dewan's desire ; went home and wrote the petition, which I kept by me. On the 26th Phagoon, Gunga Govin Sing said to me, ' You have not yet delivered the petition, and Mr. Graham is very angry about it ; you ought to go immediately to the Governor, deliver the petition, and wait upon Mr. Graham to-morrow, with the account of your having done so, and I will be at Mr. Graham's house at that time too.' I went immediately to the Governor, and presented the petition I had prepared. When the Governor had read it, he said to me, ' You have written this account in a different manner from what Mr. Graham related it to me ;' I answered, ' That I had not mentioned anything of it to Mr. Graham.' The Governor replied, ' Mr. Graham informed me that Mr. Fowke told you to declare what you presented to the gentlemen and what to the mutsuddies ; and that if you did not, you should be well punished.' From the fear that Mr. Graham's honour might suffer, I answered, ' That I would correct the petition to the manner in which Mr. Graham had related to his Honour, and bring it the day following.' The Governor replied, ' You must not put it off till to-morrow, write your petition immediately in this place.' I said, ' That I had not my moonshi with me ;' the Governor answered, ' My moonshi is at hand, dictate to him, and let him write what Mr. Graham said.' I was thus constrained to indite this petition to the Governor's moonshi, which I delivered, when finished,

to the Governor ; but I obtained no copy of it. I then declared to him that a false oath would extinguish the light of my religion : if there should be any interrogations made to me respecting the petition, I could not take an oath to it. After hearing this he dismissed me. I went on the 27th Phagoon to Hooshear Jung (Mr. Vausittart) ; gave him the account of the petition I had delivered'd to the Governor concerning the conversation at Mr. Fowke's, and told him that if I were to be simply interrogated upon it, it was very well ; if my oath should be required, that I would not give it. I likewise said the same to Maha Rajah Roy Bullub. I have, in this address, related the truth of this transaction : and God's pleasure be done with respect to the determination of the honourable Governor and Council upon it. I have no other support but God and his Prophet and the gentlemen of the Council : from the commencement of Mahawbut Jung's (Aliverdi Khau) time to the present I have acted uprightly, and have never before any of the successive rulers of this country uttered an untrue or unbecoming word. I have here related the truth, and shall intrude no further."

Appendix G.

EXTRACTS FROM CONSULTATIONS.

Fort William, the 12th August, 1765, No. 4.

BOLAKY DASS sends in a petition representing that he has never yet received payment nor any security for Petition of Bolaky Dass. the sum of two lacks thirty-three thousand rupees lent by him to the Company at Daceca shortly after the breaking out of the war with Meer Cossim ; his detention by him and Shuja Dow'a having prevented his applying before in person for recovery thereof, and requesting we will therefore now discharge the same, or grant him bonds for the amount.

It having been agreed, on an application from his gomastah, in consultation the 19th of March, 1764, to pass this loan to the account of the Nabob Meer Jaffer on appearance of its having been the propefty of Meer Cossim,

Agreed that the President do apply on the occasion to the Naib Subah to obtain him the recovery thereof.

Fort William, the 16th December, 1769.

AT A CONSULTATION.

Present :

The Hon'ble Harry Verelst, *President.*

John Cartier, Esq.

Charles Floyer, Esq.

Cland Russell, Esq.

Francis Hare, Esq.

Thomas Rumbold, Esq.

Joseph Jekyll, Esq.

The President lays before the Board a paper containing the question he proposed to Mahomed Reza Khan with respect to the demand of Ballajee Dass and his answer thereto.

It appearing that, in the year 1170 (1763), Kishen Chund, the agent of Ballajee Dass, had a sum of money taken from him by Mahomed Reza Khan, which sum was paid by him on a receipt being given by Mr. Senior as a loan for the supply of the Dacca Factory, and it was then judged to be the property of Cossim Ali Khan or the Nizamat. As the heirs of Ballajee Dass claim this sum in his right, the Council therefore desire your opinion whether, to the best of your knowledge, it was actually the property of Cossim Ali or the Nizamat or Bolaky Dass?

Answer of Mahomed Reza Khan.—When I arrived at Dacca I was informed that a sum of money was laying in Bolaky Dass's house, and suspecting it to be the property of Cossim Ali, I placed a guard over it. In the meantime Jaffair Ali (Mir Jafar) sends orders that I should seize the money, which I accordingly did, and soon afterwards advanced it to the gentlemen of the Dacca Factory for the supply of their treasury and took a receipt from Mr. Senior for the amount. The Governor having no money in the Public Treasury, as it was then a matter of doubt whether the money belonged to Cossim Ali Khan or to Bolaky Dass, the gentlemen agreed either to settle the account with the Nabob or with Bolaky Dass agreeable to the future decision of right. Afterwards I learnt from the Mutsuddies of Mahomed Ali, the Faujdar of Dacca under Cossim Ali, that the Dacca revenue had been despatched in specie to Mongheer, except on two occasions, when it was remitted by bills through Bolaky Dass, and that the amount of these bills was actually received by Cossim Ali. From this circumstance I judge the property of this sum to have been in Bolaky Dass, and was I myself to sit in judgment on the cause, I should decide in his favor.

As it appears from the above account that the money seized by Mahomed Reza Khan upon his arrival at Dacca, and afterwards paid into the hands of Mr. Senior on account of the Hon'ble Company, was actually the property of Bolaky Dass,

Agreed that he be paid his demand with the amount of interest due thereon.*

Appendix B.

Extract from a Letter from the Honourable the Court of Directors of the East India Company, Public No. 1, dated 19th February 1766, paras. 100 and 101, to the President and Council at Fort William in Bengal.

PARA.—100. In consequence of your request in the first paragraph of the supplement of your letter dated 11th March 1765, we have obtained, and herewith send you, an attested copy of His Majesty's free pardon for Radachurn Metre.

101. Upon the proceedings transmitted to us of the General Quarter Sessions, where the convict was tried, we are to observe to you that he is indicted for feloniously *presenting* the forged codicil, which is not the offence mentioned in the Statute, and therefore we must suppose this to be a mistake in the copy, and that the indictment preferred was for feloniously *publishing* the said forged codicil as a true one. This codicil, and also all forged wills and deeds upon which capital indictments are preferred, should be literally set forth, and the indictment would have been quashed in our Courts here for want of form. In the present case, we find nowhere amongst the proceedings or in your packet a copy of the forged codicil, and we observe, too, that one of the subscribing witnesses to it positively swears that Coja Solomon desired him to attest this codicil. Certainly the jury were the best judges of the weight that ought to be given to this man's testimony, but upon the evidence appearing on the face of these proceedings without a knowledge of the credibility and character of the witnesses, there appears but slender legal evidence to ground a conviction of the prisoner upon, and we are very glad you have interfered in his behalf.

* If Bolaqi was to be paid interest from 1763, he would have a very large sum to receive besides the principal.

Appendix J.*First Count in the Indictment for Forgery.*

"THE jury being impanelled, were charged with the prisoner, and the Clerk of the Crown read the indictment as follows :—

I. To wit : The Jurors for our Lord the King, upon their oath

present that Maha Rajah Nanda Kumar,
Town of Calcutta and Bahadur, late inhabitant of the town of Cal-
Factory of Fort cutta, and a person subject to the jurisdic-
William in Bengal. tion of the Supreme Court of Judicature at

Fort William in Bengal, after the twenty-ninth day of June in the year of our Lord one thousand seven hundred and twenty-nine, to wit, on the fifteenth day of January, one thousand seven hundred and seventy, in the tenth year of the reign of our sovereign Lord George the Third, King of Great Britain at the town of Calcutta aforesaid, with force and arms, feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a certain bond in the Persian language, purporting to be sealed by one Bolaky Dass, the tenor of which bond is as follows (here the bond is wrote in Persian), with an intent to defraud the said Bolaky Dass of the sum of forty-eight thousand and twenty-one sicca rupees principal, and of four annas on each rupee of the said principal sum, as premium or profit on the said principal sum, against the form of the Statute in that case made and provided, and against the peace of our said Lord the King, his Crown and dignity."

The next count is for uttering. There were twenty in all. The jury returned a general verdict, and it is not known on what particular count they found him guilty.

It will be observed that the forgery was laid as having been committed on 15th January 1770, but it would seem that on no supposition could this be the correct date. The 15th January 1770 was the date of the receipt ; but, according to Mohan Prasad's own evidence, Nanda Kumar had mentioned to him 14 or 15 days before that that the bond had been drawn up. I do not know if the failure to prove that the forgery occurred on the day alleged in the charge would have been fatal to the charge in those days.

Appendix D.

*Reply of Nawab Mudarak-ad-Daula to Sir Elijah Impey, excusing himself for having written to the Council about Nanda Kumar's case. **

نقل خط نواب مبارک امدواله بهادر نواب ناظم بنگاله و بھارو اورسہ

بخاری ششم جمادی الاول سنہ ۱۷ بذام سرایلچہ ایمپی چیف جسٹس مقاومت بجهت طراز در جواب خط وصل نمودہ مسروز و مبتغ ساخت حوالہ قلم شدہ بود کہ در مقدمہ مهاراجا نند کمار بھادر انجہ نوشته بود خیلی تعجب روداد زیرا کہ صاحبان عدالت از کسی دیگر ملاح اینمعی نمی پرسند و نصیحت نیکیگرند و بسیع شریف رسید کہ درینمادہ بصاحبان کو نسل هم نکاشتے است محض غلط بود چرا کہ کار عدالت و کار کو نسل بسیار تفاوت بھی چوچہ شامل نیست مضہ با منے بار دیگر در مقدمہ مذکور ارقام نسازند در صورت مکرر نوشتن خیلے از دیگر صاحبان عدالت خواهد گردید و بدیگر معاملات غدالت هرچہ نوشته بصاحبان عدالت خواهد نکاشت و مخلص خطیبکه نوشته بود از نسبت خطوط های پیشین عبارت و القاب محض نامناسب بود صاحبان انجہ بقلم عاطفت رقم آدہ بود مفصل دریافت نمود مخلص نظر بر اینکه چون مهاراجہ مشار الیہ در حیات غفرانیاب قبلکاہی مغفور و شرایط بندگی و جانفشنی در امور مائی و ملکی و دولتخواهی سرکار دولتمدار کمپنی انگریز بھادر بجا آورده اند در خدمت گرامی اینچہ—ان منتصع شدہ بود زیرا که مرصع و ماهر جزئی و کلی این ممالک آنساچبان اند هر کسی را گذارش مدعی پیش انصاصیان میرسد اگر در این معنی موجب دل گرانی باشد لطف ضرور و در باب القاب اینچہ ایما شدہ بود دل خیز خواه یکرنگ ہی اختیاز تمیخواهد کہ در القاب و الفاظ انجہ منزکت علو درجه و سمو مرتبہ باشد بیفراید عین خوشی اینچانک است *

Appendix 3.

Letter from Nawab Mubarak-ad-Daula to the Governor in Council asking that Nanda Kumar may be respite until the pleasure of the King of England be known.

خط نواب مبارک الدوله بهادر نواب ناظم

بنگاله و بھارو اور سہ

بنام نواب گورنر ہستن بھادر و صاحبان کونسل بتاریخ شانزدھم
ربیع الثانی سنہ ۱۶ جلوس

در صورتیکہ بطبق حکمانہ کے الحال از حضور بادشاہ انگریز صادر
شدة اکثر امورات معاملات پیشیں بتجویز می آید اینمعنی باعث
تصدیقات و قبلاحت متوطناں اینملک است مقدمہ مهاراجہ نند
کمار کہ پیش عدالت انگریز رجوع است خیلے مشکل و محال زیرا
کہ آنچنان تقصیر اگر مطابق تجویز عدالت مسطور بائبات رسیدہ
مطابق رسم اینملک برای آن از جان کشی تعلق ندارد و مسموع
میشود کہ پیشتر در ولایت ہم درانچنیں تقصیر برای جان کشی
نبود از چند سال درانجا ہم مرجوع شده است مهاراجہ موصوف
کارہائی عمده تر کردا آئند خصوص درانوقت کہ میر قاسم علی خان
در خرابی و بیدخل کردن مردمان انگریز کمر بستہ غالب آمدہ بود
مهاراجہ موصوف بر وقت والد مغفور ترددات نمایاں بظهور آورده
رسانیدن رسد غلات و سرانجام زر ہائی قراری کمپنی تنخواہ سپاهان
نمودہ، چنانچہ حسن ترددات ایشان بحضور طلبسانی بادشاہ
ہندوستان ظاهر است اعلیکہ آیانچنیں تقصیر او را بوقوع نیامدہ باشد
کسیکہ کار عمده کردا البتہ بسیار مردمان دشمنان او باشند و مردمانیکہ
بمقدمہ مهاراجہ موصوف مدعی نالش نما پیش گردیدہ است قدیم
مخالف مرضی ہستند نظر بر رفاهیت خلق اللہ نمودہ میخواهد کہ
مخصوص دراین مقدمہ تاکہ حکم بادشاہ انگریز دریافت نمی شوند
جان کشی موقوف بلشد *

Appendix K.

Indictment in the Conspiracy Case on the Prosecution of Hastings.

THE jurors for our Lord the King, upon their oath present that Joseph Fowke, Francis Fowke, Maha Rajah Nanda Kumar Bahadoor all* of the same place inhabitant and Roy Radha Churn of the same place inhabitant all of whom are subject to the jurisdiction of the Supreme Court of Judicature at Fort William in Bengal being persons of evil name and fame and dishonest reputation and wickedly devising and intending Warren Hastings Esquire Governor-General of the Presidency of Fort William in Bengal aforesaid not only of his good name credit and reputation to deprive and to bring him into the ill opinion, hatred and contempt of all His Majesty's subjects in the said Province of Bengal and of the native inhabitants there and by that means as much as in them lay to disturb the good government of the said country and the management of the commercial concerns of the Honourable East India Company there which are so eminently entrusted to the said Warren Hastings but also to bring upon the said Warren Hastings the ill opinion and hatred of the King himself and of the two Houses of the Parliament of Great Britain and of the Proprietors and Directors of the said East India Company, did on the nineteenth day of April in the fiftieth year of the reign of our Sovereign Lord George the Third by the grace of God of Great Britain, France and Ireland King, Defender of the Faith and so forth at Calcutta aforesaid in Bengal aforesaid conspire, combine and agree among themselves falsely to charge and accuse the said Warren Hastings of divers enormous and scandalous offences, particularly that he the said Warren Hastings had then lately by divers sinister and unlawful means procured a certain false accusation against the said Joseph Fowke in the name of one Cummaul Ul Deen Allie Cawn to be made and wrote, which said false accusation he the said Warren Hastings himself presented to the Governor-General and Council at Fort William aforesaid knowing it to be false; and also that he the said Warren Hastings

* In Cadell's edition this word is "late."

had heretofore corruptly and collusively received several sums of money from the said Cummaul Ul Deen Allie Cawn in the nature of bribes for services rendered or to be rendered to him the said Cummaul Ul Deen Allie Cawn, by that means representing him the said Warren Hastings as guilty of wilful bribery and corruption in his office and duty, and the jurors aforesaid, on their oath aforesaid do further present that the said Joseph Fowke, Francis Fowke, Maha Rajah Nanda Kumar and Roy Radha Churn on the said nineteenth day of April in the year aforesaid at Calcutta aforesaid in Bengal aforesaid according to the said conspiracy combination and agreement among themselves, as aforesaid, did falsely and wickedly for the evil purposes aforesaid frame and make, and cause to be framed and made a certain paper writing in the Persian language, purporting that he the said Warren Hastings had then lately by divers sinister and unlawful means procured such false accusation as aforesaid in the name of the said Cummaul Ul Deen Allie Cawn to be made and *wrote* against the said Joseph Fowke and had presented the same to the said Governor-General and Council at Fort William aforesaid knowing it to be false ; thereby falsely and fraudulently representing the said Warren Hastings as guilty of the offence of procuring the said Joseph Fowke to be falsely accused, and, the jurors aforesaid on their oath aforesaid, do further present that the said Joseph Fowke, Francis Fowke, Maha Rajah Nanda Kumar and Roy Radha Churn afterwards to wit on the said nineteenth day of April in the year aforesaid at Calcutta aforesaid in Bengal aforesaid according to the conspiracy combination and agreement between them had as aforesaid did for the purposes aforesaid by certain sinister and unlawful means to wit by entreaties, promises and threats procure the said Cummaul Ul Deen Allie Cawn to affix his seal containing the impression of his name to the said paper writing so framed and made as aforesaid, and that the said Joseph Fowke in pursuance of and according to the conspiracy, combination and agreement between him and the said Francis Fowke, Maha Rajah Nanda Kumar and Roy Radha Churn so as aforesaid had afterwards, to wit on the said nineteenth day of April in the year aforesaid at Calcutta aforesaid in Bengal aforesaid did against the will and consent of the said Cummaul Ul Deen Allie Cawn and notwithstanding the express declaration of him the said Cummaul Ul Deen Allie Cawn that the said paper .

writing had been forcibly and illegally carried away and that the contents thereof were false, take and carry away the said paper writing and present the same to the Governor-General in Council at Fort William aforesaid or to some or one of the members thereof as an arzee or petition of him the said Cummaul Ul Deen Allie Cawn to the Governor-General and Council. And the jurors aforesaid upon their oath aforesaid do further present that the said Joseph Fowke, Francis Fowke, Maha Rajah Nanda Kumar, and Roy Radha Churn afterwards, to wit on the said nineteenth day of April in the year aforesaid, at Calcutta aforesaid in Bengal aforesaid according to the conspiracy combination and agreement aforesaid between them as aforesaid had did for the purposes aforesaid unlawfully wickedly and unjustly frame and make and caused to be framed and made a certain paper writing in the Persian language purporting that the said Warren Hastings and others had indirectly and collusively received from the said Cummaul Ul Deen Allie Cawn by way of service rendered or to be rendered to him sundry sums of money, to wit, the said Warren Hastings Esquire the sum of fifteen thousand rupees, Richard Barwell Esquire forty-five thousand rupees and Hoshyar Jung, thereby meaning George Vansittart Esquire, twelve thousand rupees, and that the said Joseph Fowke in pursuance of and according to the conspiracy, combination and agreement between him and the said Francis Fowke, Maha Rajah Nanda Kumar and Roy Radha Churn so as aforesaid had, afterwards, to wit on the said nineteenth day of April in the year aforesaid at Calcutta aforesaid in Bengal aforesaid did by divers sinister and unlawful means, to wit by force, threats and menaces procure the said Cummaul Ul Deen Allie Cawn to write on the said paper writing certain words purporting that he acknowledged such sums to have been paid by him notwithstanding the express declaration at the same time of the said Cummaul Ul Deen Allie Cawn (?) had thereby pretended to be acknowledged were false and notwithstanding in truth and in fact the said Warren Hastings has not received such several sums of money or any part thereof nor is guilty of all or any of the charges or accusations so made against him as aforesaid to the great damage of him the said Warren Hastings, to the evil example of all others in the like case offending, and against the peace of our said Lord the King his Crown and dignity. And the jurors of our said Lord the King further upon their oath present that the

said Joseph Fowke, Francis Fowke, Maha Rajah Nanda Kumar Bahadoor and Roy Radha Churn all of whom are subject to the jurisdiction of the said Supreme Court of Judicature at Fort William in Bengal aforesaid being persons of evil name and fame and dishonest reputation and wickedly devising and intending Warren Hastings Esquire Governor-General of the Presidency of Fort William in Bengal not only of his good name credit and reputation to deprive and to bring him into the ill opinion hatred and contempt of all His Majesty's subjects in the said province of Bengal and of the native inhabitants thereof and by that means as much as in them lay to disturb the good government of the said country and the management of the affairs of the Honorable East India Company there which are so eminently entrusted to the said Warren Hastings and also to bring upon the said Warren Hastings the ill opinion and hatred of the King himself and of the two Houses of the Parliament of Great Britain and of the Proprietors and Directors of the said East India Company did on the nineteenth day of April in the fifteenth year of the reign of our Sovereign Lord George the Third by the Grace of God of Great Britain France and Ireland King, Defender of the Faith and so forth at Calcutta aforesaid in Bengal aforesaid conspire combine and agree among themselves falsely to charge and accuse the said Warren Hastings of divers enormous and scandalous offences particularly that he the said Warren Hastings had then lately by divers sinister and unlawful means procured a certain false accusation against the said Joseph Fowke in the name of one Cummaul Ul Deen Allie Cawn to be made and wrote which said false accusation he the said Warren Hastings had himself presented to the said Governor-General and Council at Fort William aforesaid knowing it to be false. And the jurors aforesaid on their oath aforesaid do further present that the said Joseph Fowke, Francis Fowke, Maha Rajah Nanda Kumar and Roy Radha Churn on the said nineteenth day of April in the year aforesaid at Calcutta aforesaid in Bengal aforesaid according to the said conspiracy combination and agreement among themselves as aforesaid had, did falsely and wickedly for the evil purposes aforesaid frame and make, and caused to be framed and made, a certain paper writing in the Persian language purporting that he the said Warren Hastings had then lately by divers sinister and unlawful means procured such false accusation

as aforesaid in the name of the said Cummaul Ul Deen Allie Cawn to be made and wrote against the said Joseph Fowke and had presented the same to the said Governor-General and Council at Fort William aforesaid knowing it to be false. And the jurors aforesaid on their oath aforesaid do further present that the said Joseph Fowke, Francis Fowke, Maha Rajah Nanda Kumar and Roy Radha Churn afterwards to wit on the said nineteenth day of April in the year aforesaid at Calcutta aforesaid in Bengal aforesaid according to the conspiracy combination and agreement aforesaid did for the purposes aforesaid by certain sinister and unlawful means to wit by entreaties promises and threats procure the said Cummaul Ul Deen Allie Cawn to affix his seal containing the impression of his name to the said paper writing so framed and made as aforesaid. And that the said Joseph Fowke in pursuance and according to the conspiracy combination and agreement between him and the said Francis Fowke, Maha Rajah Nanda Kumar Bahadoor and Roy Radha Churn so as aforesaid had, afterwards, to wit on the said nineteenth day of April in the year aforesaid at Calcutta aforesaid in Bengal aforesaid did against the will and consent of the said Cummaul Ul Deen Allie Cawn and notwithstanding the express declaration of the said Cummaul Ul Deen Allie Cawn that the said paper writing had been forcibly and illegally obtained and that the contents thereof were false take and carry away the said paper writing and present the same to the said Governor-General and Council at Fort William aforesaid or some or one of the members thereof as an arzee or petition of him the said Cummaul Ul Deen Allie Cawn to the said Governor-General and Council they the said Joseph Fowke, Francis Fowke, Maha Rajah Nanda Kumar and Roy Radha Churn endeavouring to represent the said Warren Hastings as having procured the said Joseph Fowke to be falsely accused whereas in truth and in fact the said Warren Hastings is not guilty of all or any of the charges or accusations made against him as aforesaid. To the great damage of him the said Warren Hastings to the evil example of all others in the like case offending and against the peace of our said Lord the King his Crown and dignity

19th June 1775.

JAS. PRITCHARD,

W. M. BECKWITH,

*Clerk of the Crown.**Clerk of Indictments.*

NOTE.—The indictment on Barwell's prosecution is not given in Cadell,

Appendix L.

WHEN, by the kindness of Sir Richard Garth, I was able to examine the bundle of papers in the High Court, which are known as Nanda Kumar's case and which have been described by Mr. Belchambers in his note on the trial, I was obliged to write as follows:—
 "None of the papers is of much importance. The recognizances to prosecute are executed by Hastings and Vansittart, and Nanda Kumar's recognizance to appear is only on their charges, which goes to corroborate the statement made by the majority that Barwell declined prosecuting. Barwell himself, as we have seen, stated that it was not his intention to have prosecuted Fowke, and that he neither asked for bail, nor was bound over. He told his counsel to prosecute, he says, but evidently his prosecution was a very languid one, for Barwell took no pains to produce evidence, but left the proof to the evidence there might be produced before the Court. There is an affidavit by two surgeons, Clement Francis and Walter Gowdie, that Fowke was too ill to attend on 21st June, and that he would be unable to do so for some days. This does not explain why Fowke's case was not taken up at the beginning of the session, which was the day fixed for the appearance of the prosecutors and the defendants in all the recognizances. It may be remembered that Hastings says in his letter of 29th April (Gleig, I, 525) that the assizes would be held on 15th June, and his information was likely to be good, as he had been in communication with the Judges, having asked them if he could, with propriety, send for Kamálddin and examine him. By the recognizances Hastings and Vansittart bound themselves to appear on the first day of the next sessions of *oyer* and *terminer*, and there prefer an indictment or indictments. Why then were these indictments not drawn up till 19th June? It appears from one paper that the foreman of the grand jury was one George Abbott.

In the bundle there is a curious paper which has no connection with the conspiracy case. It is a plaint preferred by one Dionysius Manasseh, in the Mayor's Court, against Nanda Kumar, his son Guru Das, and his sons-in-law, Radha Charan and Jagat Chand, for goods supplied. The plaint states that Nanda Kuhar induced plaintiff to send up Rs. 1,287 worth of goods to Saiyid-abad by saying that the Nawab would buy them, &c., and that plaintiff had sent them up accordingly to Guru Das. The plaint is dated 7th

December 1773, and is endorsed with the name of Driver as the attorney. The paper is interesting, as bearing out my contention that Armenians were not regarded as natives, for if Manasseh had been a native, the case could not have been brought in the Mayor's Court without the consent of the parties."

Since that time, however, Mr. Belchambers has instituted a special search for records of the trial, and, in consequence of this, many papers of the highest value have been discovered. The Judges' notes, and the depositions of the witnesses at the trial, may possibly have been irretrievably lost, though even with regard to these we should not despair, as it appears from the Judges' letter to Elliot (Impey's Memoirs, p. 122) that it was a copy of the proceedings, and not the original, which was made over to him. But, at any rate, the originals of nearly all the exhibits in the trial have been found, and probably the rest will shortly be discovered. It is now possible for us to make a list of the documents used by the prosecution and the defence. Inquirers also can look at the originals in the High Court and satisfy themselves about Silavat's handwriting, the flaw in Kamáldadin's seal, &c. I trust, too, that Government or the High Court will some day cause an authoritative edition of the trial to be published, together with copies of the exhibits and facsimiles of the most important of them.

If such an edition be undertaken, I think that the various depositions of a witness should be placed in juxtaposition, and not scattered up and down the record of the trial as at present. Clerical errors should also be corrected, and a few notes appended. The edition should also contain the records of the depositions of 6th May 1775, lately found, and of the two conspiracy trials, together with any unpublished papers relating to the latter.

I.

LIST OF DOCUMENTS FILED IN THE TRIAL.

Documents filed by the Prosecution.

- A.—The jewels-bond.
- B.—Nanda Kumar's letter to Kamáldadin.
- C.—Three Bengali tips or notes of hand from Sheikh Mohamed Kamál to Jagat Seth's house, and dated from 1167-69 (1751-53). They are cancelled documents, the tops being torn. The Exhibit C

has the endorsement "Exhibited by Kamáladdin to show the seal to be the same as the seal affixed to the deed in the indictment." On this I remark that possibly these papers are genuine, and that the Sheikh Mohamed Kamál and Mohamed Kamál Nasya mentioned in them became Kamáladdin. But it does not follow that this was the Mohamed Kamál of the bond. As Kamáladdin himself says, he told Mohan Prasad "there were a great many persons of the name of Mohamed Kamál."

Granting, too, that Kamál sent his seal to Nanda Kumar, and that Exhibit B was genuine, why should Nanda Kumar keep it. Naturally he would send it back. It is not even asserted that he made any improper use of it till 1765 or 1770.

D.—Bolaqi's power-of-attorney. Endorsed 17th June 1769.

J. MAY,

Register (of the Mayor's Court).

E.—Not found, but very likely the probate of the will.

F.—Nanda Kumar's receipt for the bonds.

G.—Specimens of Silavat's handwriting.

H.—Bolaqi's will.

II.

Documents filed by the Defence.

I.—Envelope addressed to Rup Narain Chaudhari, to show Mahtab Rai's seal, endorsed "Exhibited to prove the seal of a witness, Mahtab Rai."

J.—Not found.

K.—Notice on Mohan Prasad to produce karárnáma.

L.—Bolaqi's letter to Nanda Kumar.

M.—The account signed by Mohan Prasad and Padma Mohan.

N.—Mir Asad Ali's receipt.

O.—Notice on Padma Mohan's heirs to produce karárnáma.

P.—Not found.. Perhaps entry in books from karárnáma.

Q.—Account filed in Mayor's Court.

R.—Copy of karárnáma, marked "Rejected."

Note on the Exhibits.

Exhibit A, the jewels-bond, is torn at the top to show that it had been paid. It is en faced at top No. 1, W. M., C. G. (?) J. H. The first and third initials are probably for William Magee and John Holme, and the other, which is illegible, may stand for Cornelius Goodwin. They show that the bond was filed in the Mayor's Court.

The paper is a very insignificant looking document, being a small bit of brown paper. Mahtab's seal is at the top, and then come the small oval seal of Bolaqi and the writing of Silavat. Mohamed Kamál's seal is smaller than Mahtab's, and the impression is faint and blurred. The paper is endorsed "Original, A Ex , 9th June 1775.

J. P.,
Clerk of the Crown.

There is also on it the date 17th August 1173 (apparently it should be 1773), and the note "Bond or note of hand for amount of jewels (*sic*) and profit" and the No. 27.

Exhibit D.—The power-of-attorney is entered as registered 17th June 1769.

J. MAY,
Registrar.

* Exhibit H.—The will has on it "Filed and sealed 8th September 1769.

WHITTALL,
Attorney."

Appendix M.

I published in the *Calcutta Review* the deposition of Mohan Prasad on the 6th May 1775. Since then the depositions of Kamaladdin, Gharib Das Pathak, and Kisto Jiban have been found.

Gharib Das's deposition seems to me to be written by Elliot himself. At all events he attests it, as he also does Kamaladdin's. Gharib Das was the man called to prove that the signature on the bond was not in Silavat's handwriting.

He was examined at the trial, but he contradicted himself about Kisto Jiban's signature to the power-of-attorney, saying first that he saw him sign it and then that he had not done so and knew nothing about Kisto Jiban's signing. The Court was, therefore, obliged to call Gharib Das's son Sabut and Maharaja Nabakrishna to disprove Silavat's signature. Neither of these witnesses was examined on 6th May, for otherwise their names would appear in the general recognisance taken from the witnesses.

After Sabut's evidence we have the note:—"The counsel for the Crown attempted to call Gharib Das Pathak, which was opposed by counsel for the prisoner; and Mr. Justice Chambers being of opinion that the contradiction upon his evidence was such that he ought not to be believed upon his oath, the Court refused to suffer him to be called."

This seems to have been the only instance throughout the trial in which an objection by the prisoner was not overruled, and the exception was due to Chambers. It was after this failure that Nabakrishna was called.

Ram Nath was abandoned by the prosecution and examined by the defence, but I do not think that he materially varied from what he said on the 6th May. Throughout, the evidence against Nanda Kumar was of a flimsy kind, and such as could have imposed on nobody who knew the country and the people. There was such evidence as that of a confession by Nanda Kumar to Mohan Prasad, and of another to Kamaladdin, and of his attempting to bribe Mohan Prasad into withdrawing the case !

Mohan Prasad's Deposition at the Preliminary Inquiry.

Deposition of Mohan Prasad taken this sixth day of May 1775 before us Stephen Cæsar Lemaistre and John Hyde, Esquires, Justices of the Supreme Court of Judicature at Fort William in Bengal, who being duly sworn on his oath saith—

That he is attorney to Ganga Vishnu, who is at this time so ill that he cannot go out of his house. That Ganga Vishnu is surviving executor of the will of Bolaqi Das, and also his heir, as this deponent understands ; that about three years past Kamaladdin came to him, and this deponent demanded of him Rs. 600, which were due to the executors of Bolaqi Das, and Kamaladdin desired him to be patient, for he had then no rupees : this deponent then said to Kamaladdin, Do you remember sealing as a witness any bond to Bolaqi Das ? To which Kamal answered : He never did sign any such bond ; that at the time he put the question to Kamaladdin, he showed him a copy, which this deponent then had from the Mayor's Court, of the bond now produced in the Persian language, marked No. 1 W. M. ; that this deponent suspected this bond to be forged, because he had lived in great intimacy with Bolaqi Das, and never heard him say that he had given any such bond, and he did then believe, and now believes, if he had given any such bond, that he would have told this deponent of it. And this deponent further saith—That about four months after the last mentioned conversation, Kamaladdin told him that Nanda Kumar had desired three things of him, Kamaladdin : first to say that the signature of his name to the bond in question was his signature, and to swear to it if he was asked at the Adalat ; secondly, to bring some accusation against Mr. Lushington ; thirdly,

to bring some accusation against Basant Rai. All which said Kamaladdin answered he could not do, because of his religion ; that about three years past a prosecution was begun against Nanda Kumar in the Court of Kachari ; and this deponent further saith that the custom of Calcutta is to have three witnesses to sign as to bonds.

Then follows Mohan Prasad's signature in Nagari : "sworn before us Lemaistre and Hyde." The indorsement is "The King *versus* Nanda Kumar—Felony."

The Deposition of Cummaul al Deen taken this sixth day of May 1775 before us Stephen Cesar Lemaistre and John Hyde, Esquires, Justices of the Supreme Court of Judicature at Fort William in Bengal.

The deponent, being duly sworn and shewn the Persian bond marked No. 1 W. M. and his chop at the bottom, says it is his chop, but not put in by his knowledge or with his assent ; that the words *it is witnessed* are not either of the handwriting of this deponent or of his mounchy, he having no mounchy at that time.

That he was indebted to the Estate of Bullocky Doss six hundred rupees ; that some time after Bullocky Doss's death, when Mr. Lushington was at Houghly, Mohun Persaud called on him to discharge the debt ; he peremptorily demanded payment. He answered : I have nothing here ; how can I pay this money. He then asked this deponent if he witnessed a bond of Bullocky Doss. This deponent asked what bond he meant. He answered : One in favour of Rajah Nun Coomar. This deponent answered : There are a great many persons of the name of Mehomed Commaul in this country and that he this deponent did not witness it ; that he this deponent went away from his house. On another day this deponent went to the Maha Rajah's and told him what Mohun Persaud said ; who answered it is true, and that he the Maha Rajah thought him this deponent one of his friends, and that he affixed the seal of this deponent to the said bond as a testimony of his this deponent's being a witness thereto, and that his this deponent's seal or chop was in the possession of him the said Maha Rajah.

That the said seal is still in the possession of the said Maha Rajah ; that he got it originally because of some business which he this deponent had with Meer Jaffur Ally Cawn, and he sent the seal to Rajah Nun Coomar to be affixed to some arzees to be delivered by said Rajah Nun Coomar to said Nabob.

That, in the conversation aforesaid which this deponent had with the said Rajah Nun Coomar, the said Nun Coomar added : Go to the Adawlut, and swear that it is your seal. That he this deponent answered : Suppose the gentlemen of the Adawlut ask me if it is my seal, what answer shall I give ? To which the said Nun Coomar answered : I have hopes in you. To which this deponent replied : Do not hope anything of the kind ; men do give up their lives for the sake of their master, but they will not give up their religion. That the said Nun Coomar was angry with this deponent and said no more ; that about a year after Mohun Persaud demanded the six hundred rupees due to Bullocky Doss ; he duly paid that debt.

Sworn before us the day
and year above written.

Nagree seal.

S. C LEMAISTRE.
JOHN HYDE.

(A True Translation.)

ALEXR. ELLIOT.

This deponent, Cummauluddeen, being further interrogated before us the day and year above written on his oath, saith—That the chop or mark now appearing on the aforementioned bond, which is now produced to him, is the chop or mark which formerly was used by this deponent.

That the title of Cawn was conferred on this deponent about ten days after the accession of Nujumuddowlah to the Nabobship.

Persian
seal.

The Deposition of Ramnaut Doss taken upon oath before us Stephen Caesar Lemaistre and John Hyde, Esquires, Justices of the Supreme Court of Judicature at Fort William in Bengal this sixth day of May 1775—

Who saith—That Rajah Nund Coomar and Mohun Persaud were in the most intimate friendship, and this deponent was frequently with them. That about nine or ten months ago Rajah Nund Coomar said to him, that he loved formerly no one better than Mohun Persaud except his own son Gore Doss ; Mohun Persaud now

wanted, he said, 'to ruin him in the affair of Bolaukee Doss ; Mohun Persaud, Nund Coomar said, would only get from five to ten thousand rupees by succeeding in that business. And this deponent further said, that Nund Coomar further said to him this deponent. Tell Mohun Persaud that if he will prosecute this affair no further I will give him fifteen or twenty thousand rupees. And this deponent saith, he did accordingly go to Mohun Persaud and deliver to him the said message, to which Mohun Persaud answered, If this affair had been mentioned before it would have been possible to have done it, but now he had informed many gentlemen of the affair and it could not be done.

ରାମନ୍ତ ଦୋସ

The signature of Ramnaut Doss.

Sworn before us.

S. C. LEMAISTRE.
JOHN HYDE.

The Deposition of Gherub Doss Pautick taken before us this 6th May 1775.

This deponent, being first duly sworn, says that he is of the same caste with Seelabut and was a rafeek of his (that is, a kind of humble friend) ; that he has often seen him write. Being shewn the Persian bond with the signature of Seelabut, he says that Seelabut never witnessed a paper with his own hand but with a chop, but that that signature shewn to him is not the hand-writing of Seelabut; that he wrote a very bad hand, not near so well formed as that; that Seelabut died, he believed, seven or eight years ago.

The signature of Gherub Doss Pautick.

Sworn before us the day
and year above written.

S. C. LEMAISTRE.
JOHN HYDE.

(A True Translation.)

ALEXR. ELLIOT.

Appendix B..

Exhibited as a Translate of Original made by Mr. Jackson, 12th June 1775.

JAS. P.,

Clerk of the Crown.

Accounts

Rs. As.

66,320 7 ... Amount of a Bond.

50,488 7 ... One Time (the original word is daffa, meaning here item).
10,920 0 ... One Time.

61,408 7

4,912 ... Butta at

60/00 ... One Time Durbar's and other expences.

11,362 8 ... A Bond on account of a mortgaged House.

2,552 ... Ready Cash Rs. 2,200.

569, 2 ... On account of Dirrum Chund Gee, Sann Rs. 517 (apparently

to be paid away.)

1,40,804 1

5,000 0 ... Paid by Chitonaute

At one Time

{ 8,500
1,500

1,45,804 1

Tomussook.

73,435 0 4 Bonds 20,000 20,000 20,000 13,435

Khut

60,000 0 3 Notes 20,000 20,000 20,000

Khut

10,000 0 1 Note 10,000

1,43,435 Tomussook Bonds.

2,369 1 Current Rupees remain due.

1,45,804 1

(Signed) MOHUN PERSAUD.

" PUDMAN DOSS.

NOTE.—The upper part of the original is in Nagari, and then there is the Bengali below.

At the end of the latter it is written in Bengali that the balance was made out up to 8 Phalgun 1176 (17th February 1770) in the presence of Ganga Vishnu Das, Babu Mohan Prasad, and Padma Mohun Das. The final words are "hisab rafat hoilo, iti." (The account was settled.)

It is an interesting question, if Impey took any notice of Ex. M, and if so, what did he say about it. I think that possibly he refers to it in his charge, but very briefly and inadequately. He says that there are two pieces of written evidence relied on by the prisoner, and, after remarking

on the first of these; viz., the entry in the book from the karárnáma, he proceeds "The other is the account delivered by Mohan Prasad and Padma Mohan Das, subsequent to the account delivered in by Padma Mohan Das, in which Padma Mohan Das had taken credit for this sum ; and the subsequent account likewise contains it. I do not think much can be drawn from this, for the sums had, as Mohan Prasad says, been paid, and therefore they certainly would take credit for them, to prevent their being charged with them ; this they would do, were the monies "properly or improperly paid."

If he here means Ex. M, the reference is surely misleading. M was apparently not delivered into any office. It was an account drawn up between Bolaqi's estate and Nanda Kumar, and surely the fact that the executor or his attorney paid the money had an important bearing on the genuineness of the bond. If it had not been genuine, they would not have paid Nanda Kumar. I do not know what is meant by the first "subsequent" in this passage. Is it not a mistake for previous ?

It is proper to notice that Ex. M is apparently not the account to which the Court referred during the trial, and with regard to which they said. "This account is properly no evidence ; it is not delivered in by an executor ; and very little would arise from it if it had been signed by the executor ; for, as the money had certainly been paid, whether properly or not, the executor would have brought it into his account, otherwise he would have been himself chargeable with it." That was an original account current in English (probably the Mayor's Court would not accept accounts in any other language), and it was produced from the Mayor's Court records, whereas M was in Nagari and Bengali and taken from the Civil Court (whence the defence had probably taken it).

Exhibit N.

The sum of one lack and ninety thousand rupees of different sans (years) on account of the Sircar of the Nabob Allee Jah has been received by me at a place near the river of Doorgauttee.

BOLUCKEE DOSS.

The sum of one lack and ninety thousand rupees of different sans, written on the 14th of Rubbee-us-sannee in the year 1178 Hedjeree.

Translation of the Nagari Letter.

To the most excellent and most learned Maharaja Nunda Kumar Rai Ji,—May you make me happy by always preserving your health.

I myself am in good health. I have received your favour in the Persian language, the contents of which gave me great satisfaction and pleasure.

You write me that I ought to remain at Chinsurah till the Governor's arrival, which was expected to be very soon. In conformity to which I have remained here. When the Governor is arrived at Calcutta, you will be kind enough to exert yourself for the performance of that affair. I rest upon the hope of your patronage. You have undoubtedly heard of some other events which have happened where you are, (I mean) the unjust oppressions that have been exercised. Delay (?) not an instant upon the power which I know you possess in this respect.

You wrote to me about Dharam Chand's affair. A general release has been effectuated betwixt us, which circumstance you know. You are well acquainted with my situation. Notwithstanding which your orders are superior to everything. Whenever these large sums are recovered from the Company, you will give him 2,000 rupees from the amount.

NOTE.—This appears to me to be another translation of Exhibit L. It was written a few days after the execution of the karárnáma, and the defence may have kept both papers together.

Appendix ⑩.

*The Judgment in Naba Kissen's Case against Hastings, and the
Solicitor's remarks thereon.*

IN CHANCERY AT THE ROLLS.

Monday, 13th August 1804.

FAIRLIE AND ANOTHER against WARREN HASTINGS, Esq.

Master of the Rolls.—The subject of this cause is a loan of money made to the defendant Mr. Hastings by the late plaintiff Raja Nabakissen. As it is not by Bill in Equity that money lent is to be recovered, it is incumbent upon the plaintiff to state and prove some ground for coming into this Court to seek for the payment, or for the means of obtaining payment, of his demand; it is first therefore to be seen what the allegations are which the bill states in order to found the jurisdiction of the Court; and then, supposing them, if true, to be such as would entitle him to relief

here, it is to be enquired whether the truth be satisfactorily established.

The bill states that about the month of July 1780, the defendant applied first to the plaintiff telling him that he was in great want of the sum of three lacks of Sicca rupees, amounting to 3,00,000 and being of the value of £37,500 sterling or thereabouts, and expressing a strong wish that the plaintiff would lend the same, and in case he should do so, the said Warren Hastings would give him his bond for the payment thereof, and the plaintiff accordingly agreed to lend the said sum upon the bond of Mr. Hastings; and shortly afterwards a person of the name of Caunto Baboo, who was frequently called by another name and since dead, and who was, and for some time had been, engaged in Mr. Hastings' service, and whom he employed upon that occasion as his agent also, applied to the plaintiff upon the same subject; and it further states that, in full confidence of a full reimbursement, he promised to advance the sum requested by the said Warren Hastings, but not having so much cash at command at the time, he told the said Warren Hastings he could not give the same at once, but that he would advance the full amount at different periods, with which Mr. Hastings was satisfied, and again in person told the plaintiff that he would give him his bond for the said sum with interest, which at that time on personal security was at the rate of 12 per cent. at Calcutta, and upon the plaintiff so agreeing to lend the said sum, the said Warren Hastings duly executed a bond to the plaintiff for the same; which was accordingly offered to the plaintiff by the said Caunto Baboo, but the plaintiff declined accepting the same till the whole amount of the intended loan should be paid, and it was agreed that the said bond so executed should remain with him till after the said sum of money should be paid by the plaintiff, at which time the said bond was to be delivered to the plaintiff, who was to be at liberty to enforce the same against the said Warren Hastings, if necessary. Then it states that, in pursuance of his agreement, the plaintiff did pay the said sum of money to and for the use of the said plaintiff by instalments in the manner following. Then it states the manner in which the different sums were paid, and further shews that some short time after paying the said sum by way of loan he did frequently apply to Caunto Baboo to deliver up the said bond, who at first faithfully promised that the

said bond should be delivered to the plaintiff and that the money should be paid before the said Warren Hastings took his departure for Europe, by which assurances the plaintiff for a considerable time was satisfied till it began to be rumoured in Calcutta that the said Warren Hastings was preparing to leave India, upon which the plaintiff became alarmed and again applied to Caunto Baboo to deliver to him the bond according to the aforesaid promises, when to his infinite surprise Caunto Baboo informed the plaintiff, as the truth was and as the defendant has frequently admitted, that he had delivered up the said bond to the defendant, who has cancelled or destroyed the same, or has it now in his custody, possession, and power, and refuses to deliver it up to the plaintiff, whereby plaintiff is disabled from suing or recovering upon the said bond, or having any legal remedy thereon. That is the statement of the bill so far as regards that which gives this Court a jurisdiction, and then it prays that the defendant may deliver the said bond to the plaintiff, or pay him the money secured thereby. That the facts thus stated would, if true, be sufficient to entitle the plaintiff to come into the Court for relief has not, I think, been denied. It is obvious, however, that the proper enquiry here must be, not whether the money claimed be or not due to the plaintiff, for although, unless the money be due to him, he is not entitled to any relief, yet it would not follow that because it was due to him he would be entitled to come into this Court. The question of jurisdiction must depend upon the truth of the allegations contained in the bill relative to the security that was to be given for the repayment of the money. These are in substance, that Mr. Hastings, upon borrowing his money, agreed and promised to give the plaintiff a bond for it; that he executed a bond accordingly, which was offered to the plaintiff, but he having declined to receive it, it was agreed to remain in custody of Caunto Baboo till the money was paid when it was to be delivered up, but instead of that he gave it back to Mr. Hastings, who either keeps it or has cancelled it, so that the plaintiff is deprived of the security he ought to have had and upon which he would have an opportunity to obtain a remedy at law. Then the question is, how these facts are proved? In proof of this plaintiff has not read any part of the defendant's answer, and indeed it is evident that he could not have availed himself of any part of it in support of this statement. Some averments are

admitted to be true, yet the admission is coupled with other statements which would destroy the plaintiff's claim. The case, therefore, must be made out by evidence. Now the two principal witnesses, and indeed the only material witnesses that have been examined for the plaintiff, are Ramneedy Bannerjee, his book-keeper, and Gudadhur Sain, his cash-keeper. The witnesses, as far as they are acquainted with the origin of the transaction, conceive the agreement of the loan to have been made, not by Mr. Hastings himself, nor by Caunto Baboo, but by one Gobindo Baboo, a person who is represented to have been in Mr. Hastings' employment in a situation subordinate to Caunto Baboo. Both the witnesses disclaim all knowledge of any agreement relative to the terms of the loan or the security that was to be given in consequence of it. Ramneedy Bannerjee says he does not know what the nature of that application was that he has spoken of (the application by Gobindo Baboo) further than it was an application for the loan of three lacs of rupees, but does not know of any agreement between the said plaintiff Raja Nabakissen and the said defendant Mr. Hastings, or any person or persons on their or either of their behalf with either of them by any agent touching such loan or the terms thereof or the security to be given for the same, nor the time of giving such security nor of depositing the same in the hands of any person. The other witness speaks nearly in the same terms with an exception of a hearsay, that is, he had heard Gobindo Baboo say to the witness that there was a bond in the hands of Caunto Baboo which he understood for this person. There is therefore no fact proved or professed to be proved relative to the terms of the loan, nor consequently any direct evidence of the allegations in the bill concerning the security to be given for the repayment of it. It turns out then that the whole of the evidence which plaintiff has consists in certain declarations which these two witnesses swear Caunto Baboo made in conversation which they had with him after the money had been paid and the transaction was completely ended. Upon this the question arises, whether declaration of his of the kind, and made under the circumstances stated by the witnesses, can amount to proof of such facts as are alleged by the bill. At the hearing, when an objection was made to the reading of the evidence, not being then so fully possessed of the allegations contained in the bill to which the evidence was to be applied or of the nature and purport of the evidence itself, my

impression was that what Caunto Baboo (taking him to be Mr. Hastings' agent) said in the course of the transaction and concerning it might be as much a part of the *res gestæ* and as necessary to be known in order to ascertain what the transaction was, as any other circumstance and fact that had taken place in the course of it. But now with the whole case before me and with the opportunity of examining with precision all its parts, I do not think that the declarations proved come within the principle upon which they were supposed to be admissible. As a general proposition, it is undoubtedly true that what one man says not on oath cannot be evidence against another. The exceptions to that rule must grow out of some peculiarity of situation in which the parties stand to each other coupled with the nature of the declarations made; an agent may undoubtedly within the scope of his authority bind his principal by his agreements, and in many cases he may affect him by his acts. What an agent has said may be what constitutes the agreement, or the representations or statements that he has made may be the foundation of or the inducement to the agreement, and therefore if writing be not necessary, if it be not required by law, he must be admitted to prove that the agent did say that which he contends amounts to an agreement. So with regard to acts done, the words by which they are accompanied frequently tend to determine their quality and denomination, and therefore he who is bound by the act and liable to be affected by the act must likewise be consequently affected by the words which tend to give to the acts their quality and denomination. But, excepting one or other of these ways, I do not know how what is said by an agent can be evidence against his principal; the mere assertion of a fact cannot amount to proof of the fact, although it may have some relation to a business in which the person making the assertion has been employed as an agent: for instance, if it were a material fact to be proved that there was a bond of Mr. Hastings in the hands of Caunto Baboo, that fact, I should think, could not be proved by a witness stating that Gobindo Baboo, supposing him to be an agent in the business, had said that there was a bond of Mr. Hastings in the hands of Caunto Baboo, for that is no part of any agreement which Gobindo Baboo is making. It is no part of any statement that he is making as an inducement to an agreement, but it is mere narration. It is a thing communicated to a witness in the course

of conversation, and therefore, I should think, could not be evidence of the existence of the fact ; the admission of an agent cannot be assimilated to the admission of a principal ; a party is bound by his own admission and is not permitted to contradict it ; but it is impossible to say that a man is precluded from even questioning or contradicting anything that any person shall have asserted with respect to him or his conduct or his agreements merely because that person has been an agent of his. If any fact material to the interest of either party rests in the knowledge of an agent, for either of them it is to be proved by his testimony and not by his mere assertion. Lord Kenyon is stated by Mr. Espinasse in his *Nisi Prius* cases to have carried this so far as to have refused to permit a letter written by an agent to be read which the other party contended would shew what the agreement was with respect to the disputed particular of the transaction, holding that the agent himself must be examined ; that was in the case of *Maesters and Abraham*. If the agreement was contained in the letter, I should have thought that it would have been sufficient to have proved that that letter was written by the agent ; but if the letter was offered as evidence of the contents of a pre-existing agreement, then upon the principles I have stated the evidence was properly rejected. This doctrine is a good deal discussed in the case of *Bauerman and Radenius* in 7 Term Reports ; it is incidentally discussed only in that case, and there reference is made to another case in which Mr. Justice Bulwer had held that a receipt given by an agent for goods which were directed to be delivered to him might be read in evidence against the principal. The counsel, in arguing the case of *Bauerman v. Radenius*, stated that the contrary had since been held by Lord Kenyon at *Nisi Prius* without being questioned, and that statement does not appear to have been denied on the other side, but seems to have been acquiesced in by Lord Kenyon, who, in delivering his opinion, said it was not upon that point (meaning that such a receipt could be given in evidence) that the case had been argued and determined by the Court. But I think it will be found that this question can hardly be said to arise in the present case when it is considered what Caunto Baboo's concern in this transaction is represented to have been, and what the facts are in proof of which his declarations are offered. Caunto Baboo is stated by

the witnesses to have been in Mr. Hastings' employment. One of them says he had the general management of his pecuniary concerns, but of this particular transaction he does not appear to have had the management, if we take the fact either from the statement of the bill or from the evidence of the witnesses. The statement of the bill is, that Mr. Hastings himself made the agreement for the loan, settled the terms of it, and engaged to give the security; he did not therefore employ Caunto Baboo or any other person as his agent for either of these purposes according to the statement of the bill. According to the testimony of the witnesses, the loan was made by the interposition of an agent, but that agent was not Caunto Baboo, for they state the agent employed to have been Gobindo Baboo. The only share which they attribute to Caunto Baboo in the transaction was the receipt of the money, and only one of them states him to have been so far concerned in the transaction, for it is the first witness who states that the money was paid to Caunto Baboo and Gobindo Baboo, and the other witness, the cash-keeper, who states himself to have made the payments, says they were all made to Gobindo Baboo and Ram Persad Seal. There is a witness of the name of Punchanund Sircar, who states that Caunto Baboo came two or three times to the plaintiff's house before the loan was made, but he knows nothing of the conversation that passed between the plaintiff and him, so that upon the whole of this statement and of this evidence it does not appear that Caunto Baboo was concerned in the negotiation of the loan, or that he was employed as the agent for this purpose; and, as far as the statement in the bill goes, the contrary appears, because it represents Mr. Hastings himself to have made the agreement, and therefore any declarations of Caunto Baboo relative to an agreement which he was not employed to make, and is not stated to have been made by him, would not be the declarations of an agent, supposing such declarations were admissible in evidence. The plaintiff says Mr. Hastings and I made an agreement of a particular purport. How is that proved? Why Caunto Baboo has said or has admitted that we did make such an agreement. Now, in the first place, it would be necessary for the plaintiff to shew that Caunto Baboo was an agent whose declarations could affect his principal in the transaction, for I am making this statement not for the purpose of enquiring whether Mr. Hastings is to be bound by Caunto Baboo or Gobindo Baboo. On the contrary, I am supposing he would

have been liable to be bound by any acts either of Caunto Baboo or Gobindo Baboo upon Mr. Hastings' behalf, but what I am saying is that neither the declarations of Caunto Baboo or Gobindo Baboo can be evidence of Mr. Hastings' acts or Mr. Hastings' agreements. Therefore, if the person by whose declarations Mr. Hastings is to be affected must, in the first instance, be proved to be his agent in the transaction relative to which those declarations are made, and then it is to be shewn that the declarations are of a kind by which a principal ought to be bound. I say, in the first place, they fail in shewing that Gobindo Baboo was the agent of Mr. Hastings, for his share in the transaction is entirely out of the question with reference to the point I am discussing, because he is not alleged to make any declarations with these persons till after the transaction was over. And with respect to such a fact as Gobindo Baboo is stated to have alleged, I have already said it is a fact that could not be relevant to be proved by any agent however legally concerned in the transaction. Now I say such a fact as Caunto Baboo is represented to have stated is not matter of admission, but is matter of testimony; that a man cannot admit what another has done or agreed to do, but he must prove it, and I have exemplified that by supposing that Mr. Hastings had made an agreement of a particular purport, and it is absurd when you are put upon the proof of Mr. Hastings having made that agreement to say that Caunto Baboo admitted that he had made that agreement. In truth, Caunto Baboo does not admit that Mr. Hastings made such an agreement; his declarations fall very far short of proving the allegations in the bill, supposing they were admitted as evidence, because a great deal is left to be inferred and implied from what he says in order to make his declarations amount to proof of the allegations in the bill. The whole of what Caunto Baboo says is this: Ramneedy Bannerjee goes to him and tells him he is sent to ask for the defendant Mr. Hastings' bond for three lakhs of rupees which had been lent him by Nabakissen, that is the demand. The answer stated to be made by Caunto Baboo is this: That as the money was advanced at different periods, he had given back the bond to Mr. Hastings, who was to calculate the interest and then to execute a bond for the whole amount, that is what Caunto Baboo is represented to have said to the first witness. The other witness delivers a similar message to him, he is not represented to have made the same answer; he does not say anything

about delivering back the bond, but tells him he would procure Mr. Hastings' bond from him the first time an opportunity offered of speaking to him upon the subject. Then there is another conversation between the second witness and Caunto Baboo after Mr. Hastings' return from Benares, but that conversation has nothing to do with any bond already existing, for the message delivered to Caunto Baboo is that Nabakissen had paid to him three lakhs of rupees without bond or voucher, and that the witness was sent to request that Caunto Baboo would procure Mr. Hastings' bond for the same; then Caunto Baboo is said to have told the witness that he had spoken to Mr. Hastings upon the subject, and that Mr. Hastings said he would pay the whole amount with interest previous to his leaving the country for Europe—that is, the whole amount of the declarations represented to have been made by Caunto Baboo. As I have already said, they fall very short of bearing out the whole of the allegations in the bill. But I will suppose now that Caunto Baboo has been distinctly proved to be the agent of Mr. Hastings, and that it was distinctly proved that Caunto Baboo had said in so many words: "I know that Mr. Hastings did make the agreement for this loan; I know that he promised and undertook to give his bond for the money; I know that he did execute a bond for the money; I know that he did not give that bond to Nabakissen, but that he gave it to me, and I did not deliver it to Nabakissen but gave it back to Mr. Hastings, and tell you that Mr. Hastings undertook to calculate the interest upon the sums that were advanced from the periods at which they were advanced and to execute a bond for the whole." I will suppose Caunto Baboo had said all this in so many words, and I am of opinion that all this would have been no evidence whatever of what Mr. Hastings had agreed to do, or what he had done or omitted to do, and surely without evidence of Mr. Hastings' agreement or Mr. Hastings' act or breach of agreement it is impossible to support this bill, and therefore I am, of opinion it must be dismissed.

The Rajah NABA KISSEN against WARREN HASTINGS, Esq.

I enclose for your perusal a copy of the judgment given by the Master of the Rolls in England in the above cause, and also a copy of my agent's letter to me on the subject, from which you will

perceive that the Master of the Rolls has decided against the plaintiff and dismissed the Bill.

If you should think proper to appeal from that judgment to the opinion of the Lord Chancellor, and in the event of his concurring in the present judgment, afterwards to the House of Lords, you will please to give the necessary directions. As you find, the defendant's counsel did not look for such a determination, and your counsel most probably will advise an appeal to the Lord Chancellor.

1st April 1805.

GORE MOHAN.

(Copy.)

I am,

J. N. TAYLER.

LINCOLN'S INN, 17th August 1804.

The Rajah Rajkissen against Warren Hastings.

MY DEAR SIR,—On the 13th, the Master of the Rolls delivered his opinion and gave judgment against us in this cause. Being desirous that you should have his opinion in his own exact words, I had a short-hand writer to attend, and have enclosed every word that was spoken upon the occasion, from which you will see that his Honor laboured very hard to avoid going into the merits, and that he has therefore taken hold of such circumstances as he supposed were sufficient to authorise his dismissal of our bill for want of evidence of the nature of the original agreement between the parties. This sort of proceeding savours of political bias not expected from such a quarter, and I trust the reasons assigned cannot be supported. Our counsel are much dissatisfied, and those of our opponent did not look for a judgment which should not embrace a discussion upon the merits. In a few days I am to have a consultation; and our counsel will most assuredly recommend an appeal to the Lord Chancellor, and his opinion may be obtained early next spring, and so far I shall proceed without hearing from you and trust to be successful. But in the event of an adverse judgment I shall not appeal to Parliament without again hearing from you. I valued upon you last year for the costs then incurred, and shall do the like about the beginning of the ensuing year.

JAMES TAYLER, Esq.,
Calcutta.

B., T. N. K.

I am,
ALEX. FRASER.

Appendix 3B.*Correspondence about Kanta Babu's Salt.*

No. 100.

* READ the following letter from the Committee of Revenue at Calcutta :—

To the Hon'ble WARREN HASINGS, Esq.,
President, &c., Council of Revenue at Fort William.

HON'BLE SIR & SIRS,—We have acquainted Caunto Baboo and the other merchants who had Teeka Collaries last year in the districts of Hidgely, &c., that it is your pleasure the salt produced at them should be delivered at Calcutta on the Company's account at 86 S. R. per 100 mds. They object to this price as being inadequate to their charges, and Caunto Baboo has requested that instead of delivering the salt to the Company he may pay them a profit of 20 S. R. per 100 mds. exclusive of duties, and have liberty to sell it to private merchants. The farmer of Hidgely has requested that the Teeka Collaries may this year be put under his charge and will engage, in such case, to deliver to the Company at Calcutta a lakh of maunds, exclusive of his khazana or revenue salt, at 100 siccas per 100 mds., and we apprehend a settlement of the same kind may, if you approve it, be effected with the farmers of Tellamotta, Shujamoota, &c. Upon examining the pottas granted to the farmers, we find that by the 31st Article it is expressly stipulated that all the Teeka Collaries shall be put into their hands, none worked by private persons, and this precaution appears to be necessary from the consideration that otherwise the molunghees attached to the Revenue Collaries must naturally resort to the Teeka for the sake of the high wages which are there given them. For this reason, as well as the additional profit which will be obtained for the Company by the farmers' contracts, we beg leave to recommend that this mode be adopted. With regard to the proposal of Caunto Baboo for the last year's salt, we must observe that, by the best information we can get, it will cost him near Rs. 150 (including the 50 for the Company) before it reaches

Calcutta; that a long time has elapsed since he advanced his money, and that if the Teeka Collaries be now made over to the farmer he may suffer some loss by desperate debts.

We are, &c.,

(Signed)	P. M. DACKES.
FORT WILLIAM,	G. VANSITTART.
4th February 1774.	H. COTTERELL.
"	W. HARWOOD.
"	EDMD. GOLDING.
"	

Agreed, we write them the following answer:—

To P. M. DACKES, Esq.,

Chief, &c., Committee of Revenue at Calcutta.

GENTLEMEN,—We have received your letter of the 4th instant.

We acquiesce in the proposition of Caunto Baboo with respect to the Teeka Collary salt made by him last year, and we desire you will accordingly adjust an account with him for the amount of the produce at fifty rupees per hundred maunds, remitting to the Board of Custom the amount of the 30 pct. duties and granting certificates, as we have already regulated, for authorizing the Government's Custom Master to issue Rowannas (passes) for such part of this salt as has not already been exported.

We approve of the mode you propose for securing the Teeka salt of this year.

We are, &c.

FORT WILLIAM,
8th February 1774.

NOTE.—This correspondence, for which I am indebted to the Bengal Office, shows that the authorities did not always keep up the farce of representing Lok Nath Nandi as the salt-maker.

Appendix Q.**MR. FARRER'S EVIDENCE.**

*Taken from Parliamentary Papers relating to India and printed in 1788.
(India House Copy.)*

Minutes, etc.

Lunae 11 die Februarii 1788: Committee of the whole House on the articles of charge of high crimes and misdemeanours presented to the House against Sir E. Impey, Knight, late Chief Justice of the Supreme Court of Judicature at Fort William in Bengal.

It was proposed in Committee that Thomas Farrer, Esq., a member now present in his place, should be examined on the matter of the first charge.

And the said member being asked by the Chairman whether he would consent to be examined as proposed, the said member informed the Committee that he desired not to be considered as standing forth as a volunteer witness on this occasion, and positively refused to be examined as such if left to his own discretion; but if he is desired to be examined by the member who has instituted the proceeding and also by the person accused, or if he is called upon by the order of the Committee or at their request, which he should consider equivalent to their order, he is ready to be examined. Whereupon, by the direction of the Committee, the Chairman informed him that it was the desire of the Committee that he should be examined on the present occasion.

To which Mr. Farrer having consented, he was asked—When did you go to India?

And Mr. Farrer having been desired to state to the Committee what he knew on the matter of the said charge, he was asked—Will you please to give the Committee the information you possess relative to the matter of the first article of charge exhibited against Sir E. Impey?

I arrived in Calcutta two or three days previous to the arrival of the Judges appointed to carry into execution the appointment of a Supreme Court of Judicature at Fort William in Bengal, which

was sometime towards the latter end of October 1774. I was the first person admitted an advocate of that Court on the very day on which the Court was formed, and I continued senior advocate of that Court during the whole of my residence in Calcutta. The Court was formed at the latter end of October 1774. To the best of my recollection a Term was immediately held, but no business, scarcely any, was transacted during that Term. I stood for sometime the sole advocate of that Court ; and I believe every person there was very much indeed unacquainted with what the business of an advocate was. Some little time afterwards, other gentlemen were admitted advocates as well as myself. I was applied to before I had been a month in Calcutta by Mr. James Driver, who had before been an attorney in the Mayor's Court, and who had been admitted an attorney in the Supreme Court. Mr. Driver stated to me the matter in dispute between Mohan Prasad, as the attorney of Gangabissen, one of the executors of Balaki Dass Seat on the one part, and Rajah Nanda Kumar on the other.

He told me that there then was before the Dewani Adalat a suit proceeding between those parties, and, to the best of my recollection, that he himself was concerned in it ; but it appeared from the information he had received from his client, that Nanda Kumar, though proceeded against in a civil suit in that Court, had committed a forgery. That he had advised his client to proceed criminally against him as for forgery. By his client I mean Mohan Prasad, and that Mohan Prasad had acquiesced in that advice. That all the papers of the late Balaki Dass were then in deposit in the Mayor's Court. That, in order to enable him to prefer a bill of indictment as for a forgery, it was necessary that he should first of all possess himself of the original instrument charged to be forged. That he had accordingly, in March 1774, moved to have all these original papers, amongst which was the instrument in question, delivered to him, or to his client, but that the motion had been refused, and that the Mayor's Court had only offered him attested copies to make such use of as he should think proper. That an attested copy would by no means answer his purpose of preferring a bill of indictment, and that therefore he had been prevented from proceeding further in that mode at that time. This information of Mr. Driver's is confirmed by part of the evidence

taken in the printed trial, and at which I was present in the Supreme Court when it was taken from the records in the Mayor's Court.

Mr. Farrer then read extract from the printed trial of Nanda Kumar, page 86, as follows :—

25th March 1774.—“ Mr. Driver, attorney for Gangabissen, read a petition from him stating that by order of this Court, all the papers belonging to the estate of Balaki Das were deposited in the Court, among which were 28 bonds, receipts, and vouchers ; that he had commenced suits in the Diwani Adalat, and wanted the said bonds, receipts, and other vouchers in order to establish the same, and praying that they may be delivered to him, giving the usual receipt for the same. The Court deferred the consideration of the said petition till next Court day.”

ORDERED—“ That an officer of the said Diwani Adalat be permitted to attend at the Register's office to inspect the books, papers, and vouchers aforesaid.”

Then Mr. Farrer said :—The officer of the Diwani Adalat was allowed to inspect them, but Mr. Driver was not allowed the papers themselves.

Thus the matter rested when Mr. Driver consulted me. He told me that the Mayor's Court had not been so entirely free from influence as could have been wished, when proceeding against men of a certain description such as Nanda Kumar ; but that now that a more independent court was come out, he should advise his client to authorize him to instruct me to make the same motion before the Supreme Court of Judicature, to wit, for the original papers that he had himself made before without effect in the Mayor's Court. Accordingly, I was instructed, and did move on the 25th January 1775.

Mr. Farrer then read extract from the said trial, pages 86 and 87, as follows :—

25th January 1775.—Mr. Farrer, advocate for Gangabissen, surviving executor of Balaki Das, deceased, moves that two chests containing papers, accounts, and vouchers relative to the accounts of the estate of the said Balaki Das, deceased, and also 28 bonds and receipts belonging to the said estate, which were deposited in the registry of the late Mayor's Court at the instance of William Magee, who was constituted attorney of Bridjoo Seer Goshain, a

legatee named in the will of the said deceased, may be delivered to the said Gangabissen.

ORDERED—That the Register do look into the proceedings of the late Mayor's Court relative to the above papers, accounts, and vouchers, and inform the Court thereof on Monday next, the 30th instant.

January 30th, 1775.—Mr. Farrer, advocate for Gangabissen, surviving executor of Balaki Das, deceased, moves that two chests containing papers, accounts, and vouchers relative to the accounts of the estate of the said Balaki Das, deceased, and also 28 bonds and receipts belonging to the said estate, which were deposited in the registry of the late Mayor's Court as mentioned to this Court on the 25th instant, may be delivered to the said Gangabissen.

Mr. Brix, advocate for Sibnath Das and Lachman Das, administrators of Padmohan Das, deceased, who was one of the executors of the said Balaki Das, deceased, objects thereto.

IT IS ORDERED—That the Register do, in presence and with the assistance of Hazari Mall Babu and Kasinath (Cossenaut) Babu, both of Calcutta, examine the said papers, accounts and vouchers, bonds and receipts, and separate such as appear to belong to the estate of the said Balaki Das, deceased, from those which appear to belong to the estate of the said Padmohan Das, deceased; and that he do deliver the former unto the said Gangabissen and the latter unto the said Sibnath Das.

March 24th, 1775.—Mr. Farrer, advocate for etc., moves that two chests containing etc. may be delivered to the said Gangabissen, they not having yet been examined, pursuant to the order of the Court of the 30th January last, owing to Kasinath Babu's not attending.

Mr. Brix, etc. (verbatim as last).

IT IS REMPTORILY ORDERED—That the Register do, in presence and with the assistance of Hazari Mall Babu and Kasinath Babu, in case they both attend, or if one of them only attends, then in presence and with the assistance of such a one, examine the said papers, accounts and vouchers, bonds and receipts, etc., within one month from this day; and in case neither of them, the said Hazari Mall Babu and Kasinath Babu, do attend, that the Register do examine and separate them in the best manner he can and deliver such of them to the said parties respectively as he shall think right

within the time aforesaid. The papers were ordered to be delivered within one month after the 24th March 1775.

Then Mr. Farrer said :—I hold in my hand an attested copy by Mr. Tolfrey, the Under-Sheriff, of the warrant of commitment of Nanda Kumar, dated 6th May 1775, and signed by Mr. Justice Le Maistre and Mr. Justice Hyde.

If the Committee think proper I will read it.

Reads the warrant as follows :—

To the Sheriff of the Town of Calcutta and Factory of Fort William in Bengal and to the Keeper of His Majesty's Prison at Calcutta.

Receive into your custody the body of Maharajah Nanda Kumar herewith sent you, charged before us upon the oaths of Mohan Prasad, Kamaladdin Khan and others with feloniously uttering as true a false and counterfeit writing obligatory, knowing the same to be false and counterfeit, in order to defraud the executors of Balaki Das, deceased, and him safely keep until he shall be discharged by due course of law.

(Signed by Le Maistre and Hyde, and copy attested by Tolfrey, Under-Sheriff. Dated 6th May 1775.)

Then Mr. Farrer said :—The day after this commitment I was applied to by the attorney of Nanda Kumar, Mr. Jarret, and informed of what had passed. Two or three days after that (I cannot speak exactly as to time) he informed me that Nanda Kumar being confined in the common gaol, was not able, on account of the ceremonies of his religion, either to eat or drink, and that he took the situation so much to heart that he neither ate nor drank, and we were afraid he would die for want of sustenance in gaol. I therefore directed Mr. Jarret to apply for a habeas corpus to bring him before the Judges.

My intentions were, in case the habeas corpus had been granted, to have proposed either that he should be admitted to bail or that the place of confinement should be changed or enlarged. I should have proposed the place of confinement to have been the New Fort, under the charge of the gaoler or any other officer the Court should appoint, if he had been refused to be bailed as I supposed he would be.

I have here upon the back of the warrant of the copy of commitment in the handwriting of Mr. Jarret an account of what passed before the Judges on his application for the habeas corpus.

The application was made to Sir E. Impey, but it appears that Mr. Justice Hyde was also present; whether any other Judge was present I do not know.

Reads what is written by Mr. Jarret on the back of the copy of the warrant as follows:—

On attending at the house of Sir E. Impey to obtain a habeas corpus to bring up the body of the within prisoner, on producing this copy of the warrant of commitment, and setting forth that the prisoner was ill and in all probability must die from want of nourishment, as he had not taken any refreshment since he was confined, Sir E. Impey said he could not take upon him to grant a habeas corpus as he was not the Justice who committed him; that I ought to apply to those gentlemen or one of them. Mr. Justice Hyde being present, I applied to him; he also refused, saying he could see no end it could answer; that he apprehended his not eating was through obstinacy; that if he died it must be his own fault. Sir E. Impey to the same purport. Mr. Hyde said, it rather appeared as though the desire of being brought up was for no other purpose but to make an escape, and therefore he could not assent to it. Sir E. Impey said that should the Sheriff permit him to go out of the walls of the prison to eat, or to drink, or to wash, or the like, that in that case he (Sir E. Impey) would himself not call the Sheriff in any manner to account, but that he apprehended this application was in direct opposition to the Court: that should this man be admitted to bail, ever after there would be no law for a brahman; that was he applied to as sitting in Court, he should absolutely object to the Sheriff's confining him in any other house or place than the prison.

Present: Major Hannay, Mr. Elliot, Dr. Murchison, Mr. Tolfrey, and Mr. Gritchard.

Then Mr. Farrer said:—The first Session of Oyer and Terminer subsequent to the commitment of Nanda Kumar commenced the beginning of June following.

Nanda Kumar had, jointly with Mr. Fowke and Radhachand, been bound over to appear at that Session on a charge of conspiracy against Mr. Hastings, Mr. Barwell, and Mr. G. Vansittart. I think to answer all these three separate charges, but I am not sure they were bound over previous to Nanda Kumar's being committed for the forgery.

The 2nd or 3rd day of the Session, on the instance of Mr. Fowke, I moved that the trial for the conspiracy might be brought on, supposing the bills to be found before the trial for the forgery. The motion was rejected, that is to say, that the Court would make no order, but that the prosecutors must bring on the trials as should best suit their own convenience. On 7th June, an application was made by Mr. J. Stewart (the foreman of the grand jury, I think he was, and who was the acting Secretary to the Governor-General and Council) that Mr. Elliot might be allowed to interpret to the grand jury who were then sitting on the bill against Nanda Kumar. He did so; I think he went immediately in my sight from the Court along with Mr. Stewart. Very soon afterwards, on the same day, the bill was returned and brought into Court, a true bill. I beg leave to state to the Committee now my original plan of defence. It was to take as broad a ground of defence as possible, to make the prosecutor fight his way, inch by inch, and to interpose every objection I could possibly devise.

On 8th June, the first thing on the sitting of the Court was a motion from the prosecutor's counsel to quash the indictment for an error in the dates. I objected thereto,—that is to say, to quash that indictment to prefer a new one, insisting that the error in dates was substantial matter. The Court declared it to be a matter of course, and the motion was granted. The same day immediately a new bill was preferred and found. The prisoner was ordered to the bar to be arraigned. I prayed that on account of his rank he might not be put into the common prisoner's box, but have a convenient place allotted to him nearer me, his counsel; nor that he should be obliged to hold up his hand, but be allowed to identify himself by declaring himself to be the person arraigned. My application was rejected. He was arraigned, and the indictment read. I put in a plea to the jurisdiction of the Court which was read by the proper officer. I hold the original draught of that plea now in my hand.

Reads it as follows:—

In the Supreme Court of Judicature at Fort William in Bengal.
Fort William.—To wit,

“ And the said Maharajah Nanda Kumar in his own proper person comes, and having heard the indictment aforesaid read, and protesting that he is not guilty of the premises charged in the said indictment,

for plea nevertheless saith that he ought not to be compelled to answer to the said indictment, because he saith that the Province of Bengal, before and until the open publication and proclamation of this Hon'ble Court within the said province, to wit, at Fort William aforesaid, was regulated and governed, as to the trial of all crimes, misdemeanours, and offences committed or supposed to be committed before that time by Hindu natives resident within the said province, by the proper laws, ordinances, and customs of that province, and not by the laws and statutes of the realm of Great Britain; and that the supposed crime of which he, the said Maharajah Nanda Kumar, now stands indicted, is charged by the said indictment to have been committed before such proclamation and publication of the Hon'ble Court aforesaid. And the said Maharajah Nanda Kumar further saith, that within the said Province of Bengal, before such proclamation and publication of the Hon'ble Court as aforesaid, there was, and till that time had been, and now is, a certain Court called the Faujdari Adalat or Zamindar's Cutcherry; and that all singular crimes, misdemeanours, and offences committed or supposed to be committed before such proclamation and publication, by Hindu natives of the said province, apprehended or taken for such crimes, etc., have been, and of right ought to be, enquired of, heard, and determined in the said Court of Faujdari Adalat or Zamindar's Cutcherry, before the Judges of that Court, or in some other Courts, or before other Judges within the said Province of Bengal, and not in any Courts or before any Justices held or appointed by or under the King or the laws of the realm of Great Britain. And the said Maharajah Nanda Kumar further saith, that (space sic) in the said indictment mentioned the place where the said offences, contained in the said indictment, are supposed to have been committed, before and until such proclamation and publication of the Hon'ble Court as aforesaid, was and now is parcel of the said Province of Bengal. And the said Maharajah Nanda Kumar further saith, that he is by birth a Hindu, and was born within the said Province of Bengal, to wit, at Murshidabad, in the said province. And that at the time when the said offence in the said indictment contained is therein supposed to have been committed, and long before that time, and ever since, he, the said Maharajah Nanda Kumar, was resident and commorant within the said Province of Bengal, to wit, at Calcutta, in the said province. And that at the time when

the said offence in the said indictment contained is therein supposed to have been committed, nor at the time of the commencement of this prosecution, or of the preferring of the said indictment to the grand jury or inquest charged to take cognizance thereof, nor at any time before or since that time he was not, nor now is directly or indirectly, in the service of or employed by the United Company of the merchants of England trading to the East Indies, nor of or by the Mayor or Alderman of the late Mayor's Court of Calcutta at Fort William aforesaid, nor any or either of them, nor of or by any other British subject; and this he is ready to verify. Wherefore the said Maharajah Nanda Kumar prays judgment if the Court of the Lord the King here will further proceed upon the indictment aforesaid against him, and that he may be dismissed from the Court hereof and upon the premises.

(Signed) THOMAS FARRER.

Then Mr. Farrer said:—Against this plea the Chief Justice immediately gave a decided opinion, both as to the matter of fact and law contained therein. The fact which he stated was: That the offence was said to be committed at Calcutta; the ground of law was, the Act of Parliament, I believe, the Charter and uniform established practice and the case of Radachand Metre in particular.

Then Mr. Farrer was asked—Was there any demurrer put in to the plea?

There was no demurrer to the best of my recollection; the counsel for the prosecution said nothing.

Such was the state of the case to the best of my remembrance. Mr. Justice Le Maistre and Mr. Justice Hyde concurred with the Chief Justice in opinion. I do not remember whether Mr. Justice Chambers said anything or not. Mr. Justice Chambers was present. The plea was declared to be in no respect supportable; but I was offered leave to withdraw the same, and take time to amend it if I thought I could, sedente curia; but was asked in the same breath if I had well considered the nature and consequences of the plea to the jurisdiction. To the best of my remembrance that question was asked me by Mr. J. Le Maistre. I answered that I had given the point all the consideration in my power; that I conceived the question alluded to the prisoner's right to plead over the indictment, in case the plea to jurisdiction should be determined against him. To that, assent was nodded, and the answer, Yes, yes, I think, given, and I said that I did conceive

that, in clear strictness of law in the case of a capital felony, the defendant had a right to plead over; that appeared to me to be dis-sented to by a shake of the head, and a No, no from the Bench, from J. Le Maistre I think in particular, but whether from the rest I can-not say. At all events, however, I said that the Court had a discretionary power, I was well convinced, to allow the defendant to plead over; and that I could not retain a doubt of their exercising that discretion by their allowing him to do so. That also appeared to me not to be acquiesced in by the Court. The plea to the jurisdiction having been decided against, Mr. Brix, joint advocate in the cause with myself, and I consulted together; and it not appearing to us that the plea admitted of any substantial amendment, and we conceiving that we might be able to avail ourselves of the effect of it by a motion to quash the indictment or by a motion in arrest of judgment, we for these reasons, but more especially as the Court had so strongly intimated an opinion that in case the plea of the jurisdiction should not be withdrawn but left to be formally decided against as upon a record, that in that case the defendant would be precluded from pleading over not guilty to the indictment, availed ourselves of the leave of the Court to withdraw the plea, and it was withdrawn accordingly.

Mr. Justice Chambers immediately called for the indictment. It was handed up to him. After perusing it for sometime, he expressed himself to the following effect as well as I am able to recollect it:— That he had great doubts whether or not the indictment was well laid, being for a capital felony, on the 2nd George II. That he conceived that Act of Parliament was particularly adapted to the local policy of England, and to the state of society and manners there, where, for reasons political as well commercial, it had been found necessary to guard against the falsification of paper currency and credit by laws the most highly penal. That he thought the same reasons did not apply to the then state of Bengal. That it would be sufficient, and as far as the Court ought to go, to consider Bengal in its then state as upon the same footing that England had been between the Statute of 5th Elizabeth and that of 2nd George II. And that, under the clause in the Charter which empowers the Court to administer criminal justice in such and the like manner as Justices of Oyer and Terminer and Gaol Delivery could or might do in that part of Great Britain called England or as near

thereto as the circumstances and condition of the persons and places would admit of, the indictment might well be laid on the 5th Elizabeth. He therefore, proposed from the Bench that that indictment should be quashed, and that the prosecutor might be at liberty to prefer a new one on the 5th Elizabeth or otherwise as he should be advised. This, to the best of my recollection, is the substance of what fell from Sir R. Chambers.

The Chief Justice immediately proceeded to give his opinion on Sir R. Chambers' proposal. If I am asked to state the substance of such opinion, I am afraid I shall not be able to do it so as to do justice to Sir E. Impey and the other two Judges who concurred with him in opinion or so as to give entire satisfaction to my own mind; but having said thus much, if the Committee wish to know the impression it made on my mind, I am ready to state it to the best of my power.

That he thought the indictment was *prima facie* well laid on the indictment of Geo. II; that he had always conceived India, particularly the town of Calcutta (which was as far as it was necessary to go on the present occasion), to be greatly commercial, and that in commercial matters, as well as in matters of revenue and other money matters of a private as well as a public nature, the most important as he conceived, were carried on through the medium of paper currency and credit—and that as to the state of society and manners, that country could by no means be considered as in an uncivilized or uncultivated state; but that, on the contrary, civilization had made great progress there, as appeared from history, at a very early period—and that it might perhaps be rather deemed to be degenerating and redescending for want of wholesome laws to enforce a due attention to just dealings—than to stand in need of maturing or bringing to great perfection before such laws could be applied to them; that in fact the particular law in question had been before applied in Calcutta, as well as other criminal laws in England, before the establishment of that Court, and if I do not very much mistake, he intimated a doubt whether the instrument, charged to be forged, came within the description of any of the provisions of the 5th Elizabeth; that he thought that, *prima facie*, the one Statute was as much in force as the other, and that therefore he was of opinion the indictment was *prima facie* well laid, and that the trial ought to proceed, and in the course of

its progress, evidence be taken how the facts stood on which his opinion was founded. This is the impression I have on my mind of it; but I cannot speak with any great degree of certainty at this distance of time, having no note of it.

Le Maistre and Hyde, JJ., concurred in opinion with the Chief Justice without adding any further reason of their own, and the trial was ordered to proceed. I was very attentive to all that passed, and do not remember or believe that Sir Robert Chambers expressed any acquiescence at that or at any other time in Court. What he might do to the Chief Justice or the other Judges, amongst themselves, I do not know; nor how far his sitting afterwards on the Bench during the whole trial (which he certainly did) may be construed into an implied acquiescence, I do not pretend to say. I most certainly did and do understand him to have been overruled at the time; nor do I remember that Sir E. Impey then urged any other arguments than those which, to the best of my power, I have already stated.

So far as my recollection serves me, evidence was taken to these facts from all or most of the principal native inhabitants of Calcutta, who were examined during the course of the trial, and who were certainly persons as well qualified to speak to them as any in Calcutta, being all persons who had been much conversant both in public and private transactions of great magnitude, to wit: Hazari Mall, Kasinath Babu, Raja Nobokissen, and Khwajah Petruse. So far as my memory serves me, their evidence went strongly in support of the facts on which Sir Elijah Impey grounded that part of his opinion which was founded on facts; and if I do not very much mistake indeed, the same facts were also corroborated by more than one of the jury. I think two of them at least, very old inhabitants of Calcutta, and men of great business and credit, were sworn for that purpose during the trial. By facts I mean the state of commerce, paper currency, and credit in Calcutta; and I find at this moment a strong impression on my mind of my feeling extraordinarily hurt at it, and of my communicating such feelings to those with whom I was most confidential, the late Mr. Monson and Sir J. Cawering, as this was the principal point (independent of the merits of the case itself) on which I depended. As to any particular acquiescence on the part of Sir Robert Chambers, I can only repeat that I know nothing of it; nor do I know whether the signing the

calendar is only expressive of a matter of fact for the guidance of the Sheriff, to wit, that such and such prisoners have been tried and found guilty of such and such crimes and received from the Court such and such sentences which the calendar was to be his authority for carrying into execution, or whether it is to be considered as an approbation of the sentences themselves. If the fact be that he did acquiesce, it remains to be proved when particularly he did so acquiesce, and the nature and circumstance of such an acquiescence. Be this as it may, I have concluded in my own mind, that as no notice is taken in Sir E. Impey's printed trial of this proposal of Sir Robert Chambers, that may be the reason why no notice is taken therein of any evidence given to that point, inasmuch as such evidence did not at all apply to the merits of the alleged forgery, and therefore was not evidence to the jury, but applied simply to the point of law or discretion (call it which you please) before stated, and was therefore matter of consideration for the Court only.

By the before-mentioned proposal of Sir Robert Chambers, I found the motion, which I should otherwise have made myself, at least so far as went to the question of the indictment, anticipated, for I should not have entirely concurred with him as to the introduction of 5th Elizabeth, and I was extremely happy to find that a motion from so respectable a Judge, the next in seniority to the Chief Justice, and so duly respectable both as to legal knowledge, moderation, and candour, had been made from the Bench in so solemn a manner, as it certainly came with infinitely greater weight from him than it could from me or any other advocate, whose own opinions might be supposed not often to coincide with the motions they might think it their duty to make.

I, therefore, determined to let that point rest, so far as any specific motion might go, on his proposal, thinking it was impossible to rest it on stronger grounds; and I thought at the time, and even till within a few days of the prisoner's execution, that this was a certain presage of his life being safe, let the event of the verdict be what it might, and such my opinion I repeatedly communicated both to the prisoner and to his friends, as well as to Mr. Monson, General Clavering, Mr. Fowke, and others; and I advised Nanda Kumar to make his arrangements in time for sending a proper person to England to solicit the business on his account, and to return with as much expedition as possible in case the verdict should be against him.

The before-mentioned point being decided, the arraignment proceeded, when I tendered to the Court the paper I now hold in my hand. It is signed by Nanda Kumar's own hand.

Reads it as follows :—

"Protesting that I am not guilty of the crime whereof I stand indicted, I humbly claim to be tried by my God and my peers, according to the laws to which I was amenable at the time of when the supposed fact with which I now stand charged is supposed to have been committed."

The signature of Nanda Kumar.

Then Mr. Farrer said :—This was rejected, the Court answering, that he must be tried, as any other person must, by the laws and provisions of the Charter; and that they could see nothing particular in his case, or to that effect; asking at the same time, who the Maharajah considered as his peers, as stated in the printed trial, folio 1.

The offer of this paper being rejected, I immediately tendered this further paper which I now hold in my hand.

It is the original signed by Nanda Kumar.

Reads it as follows :—

"My plea to the jurisdiction of this Honourable Court, and my claim to be tried by my God and my peers, being overruled and disallowed, I am necessitated to submit to the authority exercised over me; and therefore, humbly protesting against the same, am obliged to acquiesce in such mode of trial as the circumstances of my case require, which I do accordingly."

The signature of Nanda Kumar.

Then Mr. Farrer said :—The Court became impatient (I beg to be understood that when I make use of the word Court, I do not mean any particular Judge; when I do, I will mention his name), saying that I must very well know that claims or protests of this kind could not be received or paid attention to. I alleged as a reason for my taking measures which might appear out of the common course, the uncommon circumstances and peculiar hardships under which the prisoner stood; particularly enumerating such, and contending that although the Statute under which he was going to be tried might be in strictness deemed, as it had just been done, to extend to his case yet that it could never have been in the contemplation of the Legis-

lature at the time of passing it that it should extend to that country, more particularly to a native Hindoo, in a transaction with other native Hindoos, which had passed long before the establishment of that Court, and in which no British subject was directly or indirectly concerned, and who was moreover wholly unconversant and unacquainted with the laws, language, customs, and forms of proceedings in our Courts of Justice, or to that effect. The Court put me short, and the prisoner was called on peremptorily to plead; LeMaistre, J., to the best of my recollection, adding, under the pain of being considered as standing mute. He accordingly pleaded not guilty, and complied with the usual forms without further opposition. The two papers which I have just given in, I myself drew out in Court at the time. Mr. Foxcroft, a gentleman then under my instruction, fair copying the first, while I myself wrote out fair the latter. I got them both signed by the Maharajah in Court, and they are the originals with his signature thereto in Persian which I have now produced.

The arraignment being finished, and the defendant having pleaded, it being then late in the day, these proceedings having taken up from 8 o'clock in the morning (as per LeMaistre and Hyde JJ.'s letters now produced, and printed trial, folio 2), the Court adjourned to the next morning, when the trial went on in the usual manner.

Reads the letters as follows :—

" Mr. Justice LeMaistre presents his compliments to Mr. Farrer; if the bill against Raja Nunda Kumar should be found, he has not the least idea of having him arraigned this afternoon; but would have him brought up to-morrow morning, and thinks the earlier the better to prevent a crowd, if Mr. Farrer has no objection." " Mr. Farrer thanks Mr. Justice LeMaistre for his information above." " Mr. Justice LeMaistre and Mr. Justice Hyde present their compliments to Mr. Farrer and acquaint him they have directed Raja Nunda Kumar to be brought up to be arraigned to-morrow at eight o'clock precisely, Wednesday, 7th June."

Martis, 12 die Februarii, 1788.

Committee of the whole House, &c.

Mr. Farrer proceeds :—I beg to refer to the printed trial, folios 2 and 3, respecting what passed as to Mr. Elliot's being requested to interpret. It never once entered into my mind to make the most distant insinuation against Mr. Elliot, of whom, not only from what I had heard, but from what I knew, no one entertained a higher

opinion than myself ; but I had reasons which, in justice to my client, induced me to make the objection, which I then did ; such objections being, by-the-bye, by his particular directions, and which reasons I beg leave to state.

[Here were the parts of the minutes afterwards ordered to be expunged.]

Mr. Farrer was going on, but an objection being taken to his giving reasons for objecting to Mr. Elliot's being the interpreter, as he did not state those reasons to the Court at the time, a motion was made, and the question proposed,—That the Chairman be directed to acquaint Mr. Farrer that he is not to give any reasons which operated on his mind, which reasons he did not state to the Court at the time of the trial, and that such parts of the minutes that have been now taken relating to the grounds of his objections to Mr. Elliot's being the interpreter, not having been stated by him at the trial, be expunged. And the question being put and agreed to,—The Chairman acquainted Mr. Farrer therewith accordingly.

Then Mr. Farrer said :—When I made the objection to Mr. Elliot's being the interpreter, I do not recollect at all the terms in which I made it ; nor should I have recollect even the reason assigned by me had I not read it in the printed trial ; that brings the substance of the transaction pretty fresh to my mind, and in my own opinion that objection is fairly expressed in the printed trial,—to wit—that I objected to the interpretation of Mr. Elliot as being connected with persons whom the prisoner considered as his enemies.

Mr. Elliot acted as one of the interpreters, and the trial went on—he discharging the duty he had undertaken very much to the credit of his own abilities and to my satisfaction. I cannot pretend to speak to the particulars of the evidence, having no written account of it. I employed Mr. Foxcroft, whom I before mentioned, to take the whole of it down in writing in Court as it came from the lips of the witnesses. He did so, sitting at my elbow, from the beginning to the end of the trial, and I from time to time referred to it as occasion required, to aid myself in making to the Court and to my client the necessary observations on the different witnesses and the particulars of the evidence. This written account of the trial, together with my observations which are stated in the Chief Justice's summing up to the jury, I, after the trial was finished, sent to the Chief Justice at his desire, and I do not remember that either the one

or the other has ever been returned to me. I have lately inquired of Mr. Tolfrey (Tolfree in original), a gentleman who was at that time much patronized by the Chief Justice, and who by the votes, I see, is ordered to attend this House on this occasion as a witness, to know if he could tell me what was become of them, and desiring him to speak to Sir Elijah Impey about them. His answer was that he believed he knew more of them than Sir Elijah; and that he thought they had been forgot and left among his (Mr. Tolfrey's) papers. I have one or two general observations, however, to make as to what passed during the trial. Our principal witnesses all, generally speaking, underwent very long and very severe cross-examinations by all the Judges, *seriatim*, Sir Robert Chambers excepted, by Mr. Justice LeMaistre principally; by Mr. Justice Hyde next, and Sir Elijah Impey least of all, except Sir Robert Chambers, who asked very few questions indeed.

One day, just previous to the rising of the Court for dinner (I think it was the second or third day, I am not sure which), after the prisoner had entered on his defence, Nanda Kumar desired leave to retire from the Court and to speak to me in private. Leave was given, and we retired to the further end of the court-room, which is a very long, spacious room, at other times used as an assembly room. We were surrounded at a distance by the Sheriff's people. I could not speak the language of the country; he spoke no English. We conversed together through the medium of an interpreter whose name was Occermann, a person in whom he placed confidence, and who afterwards acted as General Clavering's banian. He began by thanking me in strong terms for the pains I had taken to save him; but told me he was convinced from what he saw that it would be of no avail, as it appeared to him that the Court were decidedly his enemies, assigning as his reason for such his opinion, the different treatment his witnesses had met with from the Court from that which the prosecutor's had; that therefore it was his intention not to give either the Court or me any further trouble, but submit at once to his fate. I advised him strongly by no means to give way to any such idea; to rest assured that the Court would do him justice, and that though somethings might appear somewhat extraordinary to him, who was unacquainted with our Courts, yet that I had seen nothing that could warrant any such conclusion as he had drawn. He put it very strongly and very solemnly to me whether I did not think his witnesses had been very dif-

ferently treated by the Court to what the prosecutor's had been; and whether, in my opinion, the Court did not seem against him; I avoided giving him a direct answer, but told him, since it seemed to have made such a deep impression on his mind, I would think of some means of communicating what he had said to the Judges; but that it was a very delicate point, and that I was at a loss at that moment how to do it. I begged him at all events to make his mind easy, and that when he was brought back into Court after dinner, I would let him know what I had determined on or done. This was the whole that passed between us. He returned back again into Court, and shortly after the Court rose for dinner. I felt the extreme impropriety that there would be in mentioning anything of this sort in Court, according to my ideas of it; and I had also great delicacy as well as considerable apprehensions as to doing it in private. However, as I thought the prisoner's coming into Court, giving up his defence at once, and assigning those publicly for his reasons which, I was really apprehensive he would do, would be the worst and most disagreeable thing that could happen, I therefore determined on communicating in private to the Judges what had passed between him and me. I accordingly immediately after dinner, without having then or at any time since, to the best of my remembrance, mentioned a word of the matter to anyone, directly or indirectly, not even to Mr. Brix, joint advocate with me in the cause, went upstairs to the Judges' room (the counsel dined below, the Judges on the same floor with the court-room), and sent in a message to the Chief Justice by his chobdar. He came out to me. Before anything particular was said, the other three Judges, at his desire as well as at mine, were sent for out, and all came. I began by begging that no degree of blame might be imputed to me for what I was going to mention, solemnly averring, as the fact was, that the idea of it had not, directly or indirectly, originated with or been encouraged by me, but that it had originated with the prisoner himself, and been communicated to me when we retired from the Court that day before dinner; that it was of a very delicate nature, and by no means, in my opinion, fit to be mentioned in the Court, and that I must again beg not to incur their displeasure by communicating it in the manner. I then proposed, which appeared to me the least objectionable; and that I would not have offered to do that, were it not through the apprehension that something, which I conceived would be more disagreeable,

might otherwise follow. After a short consultation among themselves, the Judges determined to hear me. I then stated to them, as near in substance as I possibly could, what had passed, as before mentioned, between Nanda Kumar and me. The following was the substance of their answer to the best and utmost of my remembrance and belief :

1st.—That the nature of our defence, after the plain tale told by the prosecutor and his witnesses, was in itself suspicious.

2nd.—That they found the prosecutor's advocates wholly unequal to the task of cross-examining witnesses prepared as ours appeared to have been ; and that had they not acted, and did they not continue to act, in the manner they had done, it would be in effect suffering the purposes of justice to be entirely defeated.

3rd.—That as to any difference of treatment by the Court between the prosecutor's witnesses and the prisoner's—in the first place, the prosecutor's case did not appear in so suspicious a light as ours did ; and in the second, that, generally speaking, I had cross-examined the prosecutor's witnesses as far as the case seemed to them to require, and that they, the Judges, had in fact, where I had left anything deficient, put to them every question which appeared to them necessary to elucidate the business and answer the ends of justice. In all I have here said of the Judges' answers to my communication, I do not mean to include Sir Robert Chambers, but only the three others ; and as to them, I beg leave again to observe, that I only state a fact, and that not partially but fully and fairly, the whole of what passed on both sides, to the best and utmost of my remembrance and belief, and which I should not have thought myself justified (standing in the light I at present do) in concealing. I do not remember that Sir Robert Chambers said anything at that instant. He staid behind when the other Judges returned into the room, or took another opportunity almost immediately afterwards and before the Court sat again that day (I am really not sure which, but think the former) of speaking to me ; nobody present but himself and me. He said that the communication I had made gave him great uneasiness ; that he had been apprehensive some such idea might prevail ; and particularly desired me to communicate to Nanda Kumar in his name, that every question that he had or should put to his witnesses had been and should be as much in support of as against them ; that he would ask but as few as possible—none

but what should appear to him absolutely necessary in elucidation of any point made by the respective advocates and left by them in a state of uncertainty. This, as well as I recollect, is the whole that passed.

Previous to the sitting of the Court that day after dinner, I communicated to Nanda Kumar what I had stated to the Judges, suppressing, however, a great part of what the majority of them had said in answer, stating fully what Sir Robert Chambers had desired me, and endeavouring by every means in my power to make his mind as easy as possible.

As a presumptive proof, at least, that the Judges were convinced of the propriety of their conduct, I declare that I think the prisoner's witnesses fared worse afterwards than they had done before. Sir Robert Chambers, I think, strictly adhered to the terms of his communication.

Jovis, 14 die Februarii 1788.

Committee of the whole House, etc.

Mr. Farrer proceeds:—When I mentioned the Session of Oyer and Terminer at which Nanda Kumar was tried, I meant only to say that it was the first which has been held after the papers had been obtained out of the registry of the Court; which, from the evidence of Mr. Sealy in the printed trial, folio 87, appears to have been the 27th of April 1775. There must have been one session held soon after the Judges' arrival, I think before Christmas 1774, but there was little or nothing to do at it. It was considered, I believe, to be held for form's sake, farther than for anything else. I do not recollect having ever attended it, nor do I believe any other advocate did. It is true that the proceedings in the Court of Dewani Adalat were not given in evidence at the trial of Nanda Kumar by either party; the reasons why I did not give them in evidence are as follows:—

1st.—That in these proceedings Nanda Kumar's witnesses in several material points contradict each other.

2ndly.—That the plaintiff there, when peremptorily called upon by that Court to set forth specifically the nature of his demand, expressly charged the instrument in question to be a forgery.

3rdly.—That when Nanda Kumar had this alternative offered him by the plaintiff, either to leave the matter to arbitration or to make oath that his demand was just, and that the instrument in

question was actually executed by Balaki Das, he appears to have declined both one and the other.

4thly.—That when he found the Court, in consequence of such his refusal, were proceeding to judgment, and that he would no longer be allowed to protract the decision by introducing from time to time new witnesses, he then agreed to arbitration. These were my reasons for not producing these proceedings in evidence. Why the counsel for the prosecution did not produce them I do not know. Such proceedings appear to have commenced the 28th August 1773, and to have ended the 9th June 1774 by a reference to arbitration. I have a copy of these proceedings stated in my brief, which I am ready to produce, should the Committee ever call upon me to do so. The trial lasted to the 15th of June inclusive, or rather to the 16th, about four o'clock in the morning I believe. As soon as I had closed our defence, being quite exhausted, and very ill through the unremitting fatigue which I had undergone, both in mind and body as well in Court as out of it, both night and day, for a considerable length of time, in the hottest season of a Calcutta climate, I immediately withdrew from the Court, went home, and got to rest; so that I did not hear the summing up of the Chief Justice or any part of it. The first intelligence I had of the verdict was from Mr. Jarret, the defendant's attorney, who came into my bedroom about four o'clock in the morning, waked me, and told me that the jury had brought in the verdict of guilty. When I got up in the morning, I found on my table the letter which I now hold in my hand, from Mr. Brix, joint advocate with me in the cause. I am well acquainted with Mr. Brix's handwriting, having often seen him write. I believe it to be all in his handwriting. Mr. Brix, I have been informed and believe, is now dead.

Reads it as follows:—

DEAR SIR,—It is with infinite concern I communicate to you what you may probably already have heard from Messrs. Jarret and Foxcroft, that the Rajah hath not only been found guilty, but Mr. Durham, on behalf of the prosecutor, hath undertaken to prosecute Mir Asad Ali, Sheikh Yar Mahmud, and Kissen Juan Das for perjury at the instance of the Court. How unlucky is the Rajah to have brought this misfortune upon himself by desiring the last examination of Juan Das, which hath overset all the weight of his former evidence Sir Elijah, in summing up the evidence, observed

that, having proved from the first moment of his examination till the time the evidence was closed a fair and candid witness, he would have directed the jury to find him not guilty, as he looked upon the existence of the coroners clearly proved by him, till the moment he prevaricated in his examination after the evidence was closed. I enclose the notes you gave Sir Elijah, of which as well as of mine he made use; after having taken some rest, which I am much in want of, not having slept more than two hours since three o'clock yesterday morning, I will wait on you to consult what steps are necessary to be taken, in which I will with pleasure afford you every assistance in my power, as I really pity the old man's case.

I am, dear Sir,

Friday morning.

Very truly yours,

C. F. BRIX.

Mr. Farrer then said:—Mr. Brix came to me, according to his letter, the next morning, or rather the same day; and we were for a considerable time in consultation together on the particulars of what had passed, and on the further steps necessary to be taken. The result was in pursuance of my original plan, to wit, that of endeavouring to avail myself of every possible means that could be devised to save the prisoner's life—

1. The motion in arrest of judgment. In case that should fail;
2. A petition of appeal. And in case that should also fail;
3. An application to the jury to recommend the prisoner to the Court for a respite, so as to give His Majesty an opportunity of extending to him his most gracious mercy.
4. Another petition from the defendant himself to the like purpose.
5. Another through the medium of the Governor-General and Council.
6. Another through such of the native inhabitants of Calcutta and the neighbouring districts as might be disposed to sign the same.
7. Another from the Nawab of Bengal, Mubarrik-ud-Dajla, and, in short, from every quarter which it might be supposed might be of the least use. Continuing very ill and not in a condition to go out of my house, I desired Mr. Brix to inform the Court that I

intended to make a motion in arrest of judgment, and to pray then to fix a day for hearing such motion. I, in consequence, received from Mr. Brix a few days afterwards the note I now hold, in my hand. It is in his own handwriting.

Reads it as follows :—

DEAR SIR,—The trial for the attempt of subornation will, I believe, be over to-day, and in that case the convict* will be brought up to receive sentence to-morrow. This the Court desire me to acquaint you of, and also that you can plead no other variance between the record and the bond, in arrest of judgment, than what hath already appeared in evidence at the trial. I flatter myself you will be prepared, and am, dear Sir, very truly yours,

20th June 1775.

C. F. BRIX.

Mr. Farrer then said :—At the time fixed, which I believe was the 22nd or 23rd June, I attended the Court, though contrary to the advice of Dr. Campbell, under whose care I then was, being still very ill, to make the motion in arrest of judgment. I made the motion, and the ground I took on that occasion was, to the best of my remembrance, as follows :—

1st.—The variance between the record and the instrument charged to be forged.

2nd.—The verdict being general, and not stating whether it was for forging or publishing, or which of the instruments charged in the indictment specifically it found to be forged or published. And thirdly (and this was what I principally relied on, having, I think, but barely stated the two former points), that the defendant 'having been indicted, tried, and convicted capitally on an English Statute 2 Geo. II, it was necessary to have proved that the instrument alleged to be forged came strictly within the received legal definition and description according to the laws of England and in the English Courts of Justice of some one or other of the instruments of writings which that definition made it a capital offence to forge or publish and for the forging and publishing of which he was indicted. That he was indicted—

1.—For forging a bond.

2.—For publishing a bond, knowing, etc. (*sic*).

* This letter, which I had not seen before, shows that Sir J. Stephen is right about the date of the sentence.

3.—The like of a writing obligatory:

4.—The like of a promissory note.

That the instrument stated in the indictment and found by the verdict to have been forged or published was neither bond, writing obligatory or promissory note, according to the received descriptions of these instruments respectively by our law-books and Courts of Justice ; and that though the Persian word, which was translated as synonymous to bond or writing obligatory, might be so in common acceptation, yet that that was not sufficient to make it so in point of law, but that it must be proved to be the same thing essentially and exactly, according to technical legal description ; that sealing and delivering were both essentially and expressly necessary to make it either bond or writing obligatory, and that signing was not necessary to the validity of those instruments ; and I quoted a number of cases from the law-books in support of my arguments ; that the instrument in question was neither in fact sealed nor delivered according to the definition or understanding of our law of those solemnities, nor had it any attestation of its being so. The attestation being only—" It is witnessed :" whereas the attestation to all bonds, deeds or writings obligatory was always " Sealed and delivered ;" that it had simply the name of the party executing or signing it put to it in ink, from the cutting of such name in or upon what is called in the Persian language, as I understand, a mohr, which might, for aught I knew, be synonymous with the word seal in our language.

But I contended, that synonymous terms in different languages or words which in common acceptation had the like meanings were not, nor could be, of any effect where there were essential differences in the things themselves, which I argued was the case in the present instance ; and that the bare affixing the name in ink from the cutting on a mohr could not be considered as having any other effect in law than the bare signing with a pen would have had ; and that even the witnesses had all, except one, so affixed their names, to wit, from the cutting thereof, on a mohr. And I further contended, that it was clear that the Statute of Geo. II could not be deemed to extend to any other instrument save those which were strictly and expressly enumerated and described therein, inasmuch as, five years after the passing of that Statute, it had been found necessary by the Legislature to pass another, to wit, 7 Geo. II, ch. 22, making it also capital felony to forge Exchequer and bank

bonds and bills, lottery tickets, &c., which was, I thought, a clear proof that, until the passing of such second Statute, the forging or publishing of Exchequer and bank bonds and bills, &c., had not been held to be included under the former Statute, though I conceived them to have a much greater resemblance to a bond or writing obligatory than the present instrument had ; and that as to the calling it a promissory note, the form and nature of which are so universally known and so strictly construed and adhered to in our Courts of Justice, it had not the most distant resemblance to one. . Such was the substance of my arguments on this occasion, to the best of my remembrance. My arguments seemed to make little or no impression on the Judges.

The heads of their opinions delivered *seriatim* were as follows : The paper I hold contains the original short heads, or notes thereof taken in my own handwriting in Court at the time. It first contains a reference to several cases which I quoted in support of my argument.

Reads it as follows :—

C. J.—It is unnecessary to determine whether it is either a bond or a promissory note ; I am of opinion that it is neither the one nor the other.

LeMaistre.—As to the variance, thinks it does not vitiate the indictment ; doubts not but that the verdict being general, does not vitiate the indictment, that the instrument comes within one or other appellation charged in the indictment ; quoting as a reason, that Blackstone says, within one or other of the Statutes against forgery, every species thereof which it can enter into the mind of man to commit is comprised ; gives no particular reason.

Hyde.—Thinks the variance does not vitiate the indictment. Unnecessary to determine within which appellation the instrument comes : but inclines to think it a writing obligatory, and the Persian mohr to be a seal ; quotes the seal of the Court, being only an impression in ink. Thinks the verdict good, though general. Agrees in all points with the Chief Justice and Judges.

Mr. Chambers speaks last of his own. Thinks the variance ought not to vitiate the verdict. As to the general verdict, had his doubts ; but thinks it may be good. What was said by Mr. Hyde weighs strongly with him. Mentions the case of Powell. Thinks the instrument comes under one or other appellation charged

in the bond. That was he alone to pass sentence, doubts would still remain in his mind as to the indictment's (?) capital.

Sentence per Chief Justice—a definitive sentence — Must not expect mercy—Death.

Then Mr. Farrer said:—I did not make the inapplicability of 2nd of Geo. II one of the grounds of this motion. I thought that point rested better as Mr. Justice Chambers had left it ; and, moreover I felt myself beat even in my own opinion on that ground. This motion, like all my former ones, being overruled, and sentence of death passed, the next step was to prepare and prefer a petition of appeal. I desired Mr. Brix to come to me without loss of time that we might consult together and determine the matter to be stated therein. He did so the afternoon of the same day, to the best of my recollection. After fully deliberating upon and weighing all that had passed in the cause, we were both of opinion that we could assign no legal reasons which we thought were likely to weigh with the Court, nor could we safely venture to arraign the verdict and say that it was contrary to evidence, after the Court had ordered several of our witnesses to be apprehended and indicted for perjury. That, therefore, it would be better, as the Court had by the Charter a discretionary power to grant or refuse appeals in criminal cases, and as the Charter did not require particular legal reasons to be set forth therein, but only generally the cause of such appeal—we thought it would be better, I say—to make the petition general, lest that, by a contrary conduct, we should, in case this petition of appeal should be unsuccessful, prejudice any intended application for a respite, on which we had the most dependance.

We determined, therefore, that the petition of appeal should simply, and in terms as general as possible, state that the petitioner, a Hindu native of Bengal, wholly unacquainted with the English laws, language, customs, and judicial modes of proceeding, had been indicted, tried, found guilty, and received sentence of death for the crime of forgery, pursuant to the English laws, not knowing what punishment those laws inflicted on such crimes ! Nor having, consequently, been so well prepared to make his defence as a British subject in like situation might have been, for which, amongst many other reasons, he conceived himself aggrieved by the said proceedings and sentence; and, therefore, praying an appeal against the same to His Most Gracious Majesty in his Privy Council. And I very well remember our

determining that, in case the Court should demand to know on what reasons particularly we grounded our appeal, and why they were not particularly stated in the petition, which we were apprehensive they might do, it should be answered, that as the matter was recent, and every reason we could state, and perhaps more than might occur to us, must be fully in the breast of the Court, so as fully to enable them to exercise that discretionary power which the Charter had given them, we had, therefore, thought it unnecessary to trouble them with more than what the petition stated; but should fully, in case the appeal was allowed of, state our whole case home to the counsel to be employed in England. Mr. Brix, at my request, undertook to prepare the petition of appeal on the foregoing plan.

The next day, in the forenoon, to the best of my remembrance as to the time, he sent me the draft thereof. I hold in my hand the original letter in which it was enclosed in his own handwriting.

Reads it as follows:—

DEAR SIR,—I send you the draft of a petition for an appeal for a reprieve. Mould it to your own wish and return it, when I shall get it wrote fair and send it you in the evening.

I am,

Dear Sir,

23rd June 1775.

Very truly yours,

C. F. BRIX.

Then Mr. Farrer said:—Mr. Brix, I very well remember, had so far mistaken my idea, that as we had determined on a petition of appeal, and in case that should be refused, a petition for a respite, that he had joined the two things together in the same petition, and had therefore, after praying leave to appeal, further prayed that, in case the Court should not think proper to grant such appeal, then that they would be pleased to respite the petitioner. I well remember striking the latter part out, as the appeal was a proceeding under the Charter, but the application for a respite stood on a different ground. This done, I returned the draft to Mr. Brix, desiring him to get it fair copied, and present it in Court the then next day, as my exertions in Court on the motion for arrest of judgment had greatly increased my illness, which was a violent pain in my breast and side, accompanied with spitting of blood, so much so that Dr. Campbell forbade me going out on the occasion, and from which I have never yet

thoroughly recovered. Mr. Brix came to see me next day in his gown, as he appeared to have come out of Court, stated to me that he had presented the petition agreeable to what had been determined on between us, but that it had been rejected, and that the principal reason assigned for such rejection was its not containing the specific reasons on which it was founded. And as a further reason, to the best of my remembrance, that it could hardly be supposed to be true in fact, as the prisoner must be supposed to have known the case of Radachand Metre. Mr. Brix and I held a further consultation as to the propriety of presenting a further petition of appeal containing all our reasons at large, when Mr. Brix gave it as his opinion that, from what had fallen from the Court on the application of this day, our so doing would be more likely to do harm than good; in which opinion I acquiesced, and no further attempts on that ground were made. I have not got the original draft of the petition of appeal to produce, as it was a paper of Mr. Brix's preparing and not of mine, consequently he kept his own draft. I attended to what Sir E. Impey said at the bar in his defence on this head, and in justice to him I must declare that I cannot take upon myself to say that Mr. Brix stated to me, whether he (Sir E. Impey) was present or not when the petition of appeal was presented; nor what Judges in particular were present on that occasion; nor do I recollect asking him, though I think it is most likely that I should. The next step was to apply to the jury, to endeavour to prevail on them to recommend the prisoner to the Judges for a respite. In pursuance of what had been before determined on in this respect, I myself prepared a petition, which I got fair copied, and went with it personally to the house of Mr. Robinson, the foreman. Not finding him at home, I left a note, expressive of the business on which I had called, together with the petition, submitting it to his perusal and approbation. That note I wrote in his house, and therefore took no copy of it, and indeed, not thinking it of any consequence. Soon afterwards, on the same day, I received from Mr. Robinson the note which I now hold in my hand. It is the original in his handwriting; I have frequently seen him write, and am well acquainted with his handwriting.

Reads it as follows:—

Mr. Robinson's compliments to Mr. F., and begs him to reflect, the nature of a British juryman's oath and opinion must have been such at

the time of giving their verdict as can never with propriety be altered.

Monday, 31st July 1775.

Then Mr. Farrer said :—Not being at home when his note came to my house, I the next morning sent him an answer, the original draft of which, in my own handwriting, I now hold in my hand.

Reads it as follows :—

* There is nothing, as I conceive, in the petition which I left for your perusal which either expresses or implies an alteration of opinion in the jury, but quite the reverse ; it still states the jury to be of the same opinion, it ratifies and confirms their verdict, and only suggests reasons why the criminal may, under the peculiar circumstances of his case, be thought worthy of some degree of mercy. Surely there can be no impropriety in this, as it will hardly be denied, but that the strict requisition of a positive law may in many cases oblige a jury, in conformity to the tenor of their oath, to find a person guilty, where there may, notwithstanding, be many reasons for an application to mercy.

Whether this is a case of this nature or not, it is not my province to determine ; neither do I wish to influence anyone either one way or the other ; suffice it for me, in compliance with the earnest solicitation of an unhappy victim, to have acquitted myself to my own feelings in having made the application ; you will judge and act for yourself.

I am, &c.,

Tuesday, 1st August 1775.

.T. F.

To Mr. JOHN ROBINSON.

Copy sent as dated.—T. F.

Then Mr. Farrer said :—To this letter I received from him the same day in reply the letter which I now produce ; the body of the letter is not in his handwriting, but the name John Robinson subscribed thereto I think is.

Reads it as follows :—

To Thomas Farrer, Esq.

SIR,—I had every tender feeling with which the human heart can be impressed for the convict, both at, and after his trial, nor would the strict requisition of a positive law that in many cases obliges a jury, in conformity to the tenor of their oath, to find a person guilty have prevented myself and brethren from recommending him to

mercy, had our conscience admitted our so doing. The veneration I have for the Bench of Judges, before whom the Maharaja was tried, will not admit me to doubt that if they think him an object of compassion, no want of such lenity will be omitted by recommending him to our most Gracious Sovereign for his pardon. I must, in this case, judge and act from my conscience, and at the same time I cannot help remarking that the offering such a petition for me to sign very much hurts my feelings, especially as it is on a subject which, in my opinion, no person has a right to interfere in.

CALCUTTA,

1st August 1775.

I am, Sir,

Your most obedient servant,

JOHN ROBINSON.

Then Mr. Farrer said:—The first day of my appearance in Court after this application and correspondence, I found that Mr. Robinson had carried or transmitted both my letters and his to the Chief Justice and complained to him of my application. How the petition found its way back to my hands I do not recollect; all that I know in that respect is that I find it in my possession subscribed, when or where I do not know, with the name of Edward Ellerington, who was one of the jury with whom I was not acquainted. I rather think he came to my house and signed it there.

Reads it as follows:—

To the Hon'ble, &c. (the four Judges).

The humble petition of us, &c. (the jury, impaneled)

SHEWETH,—That your petitioners, on the trial above-mentioned, acting under the sacred tie of an oath, thought it incumbent on them, in compliance with the obligation thereof, and in discharge of their duties as jurymen, to find the said Maharaja Nanda Kumar guilty under the laws of England of the crime for which he was so tried; and that they brought in their verdict guilty accordingly; since which, in pursuance thereof, sentence of death has been passed upon him, and he now lies under the terrors, and subject to the execution of such sentence.

We beg leave with all deference to submit it to your Lordships' consideration and superior judgment that a law, the infringement of which is attended with consequences so highly penal, should be

introduced into a country so far distant and among people whose customs, principles of government, religion, and laws are so totally different from those of the country for which such law was calculated and originally intended, with every possible degree of notoriety and certainty, before the punishment annexed thereto is executed in the most extreme degree on an unhappy criminal.

• And that in respect the offence of which your petitioners have found the said Maharaja guilty as aforesaid, appeared in evidence on the trial to have been committed many years ago, it is probable he might at that time be ignorant of the punishment annexed thereto by the laws of England, and might, more especially as the transaction was between native Hindus, and no British subject or other European any ways concerned therein, or affected thereby, only apprehend himself liable to be tried by his native laws for the money obtained thereby.

For these reasons, together with the very advanced age of the unfortunate criminal, his former rank and station, both in public and private life, and such other reasons as may to Your Lordships in your great wisdom occur, we beg leave to submit it to Your Lordships' consideration whether or no some other mode of punishment, the effects of which may be equally salutary, may not, under the circumstances aforesaid, be adopted, by which he may expiate his said offence.

And therefore, as there is vested in the said Supreme Court a power of respitting the execution of convicts, where such Court shall see occasion, we humbly pray Your Lordships will be pleased to respite the execution of the said Maharaja Nanda Kumar, and recommend him to the mercy of His Most Gracious Majesty that His said Majesty may be pleased to reprieve or pardon him upon condition that restitution be made to the party injured by the said forgery, and also upon condition of the said criminal's doing some act of public charity or performing such other conditions as to His said Royal Majesty may seem meet, in order not only fully and publicly to evince and establish the propriety and necessity of the introduction of the said laws of England into this province, but also as a perpetual monument of His said Majesty's approbation of the said sentence and of His said Majesty's lenity and mercy.

And your petitioners, &c.

(Signed) EDWARD ELLERINGTON.

Then Mr. Farrer said:—The Chief Justice, immediately on the sitting of the Court, proceeded to give me from the Bench what I felt as a severe reprimand for the part I had acted respecting this application, the substance of which was, to the best of my recollection—that my duty as an advocate had finished in Court with the cause; that it was incumbent on the Court to watch over the conduct of its advocates both in and out of Court, as well as to protect juries from improper application to them; that my conduct on this occasion had been derogatory to my professional character; that no advocate in England, who had a proper regard to his character or to the dignity of the Court to which he belonged, would have acted as I had done; and that he hoped for my own sake, as well as for that of the Court, that that would be the last time when he should have occasion to speak to me on so disagreeable a subject, at the same time demanding to know what I meant by the expression in my letter “unhappy victim,” as it might be construed to convey an insinuation against the justice of the proceedings and the verdict.

I apologized for what I had done in the following terms or to that effect:—That I had no intention, at the time I made the application to the foreman, to give any offence either to him or to the Court, nor did I even now conceive how it could well be considered in that light; that I was fully sensible, with His Lordship, that my duty as an advocate had ceased with the cause in Court; but that in what I had done after the business was finished in Court, I had in fact considered myself acting as an individual rather than as an advocate, and been actuated by motives of humanity only; that considering the helpless condition of the unhappy man, confined in prison under sentence of death, his dependents and friends, struck with consternation, some of them fled, others afraid to stir in his behalf, both himself and them, moreover, ignorant of our laws, language and customs, not knowing what further to do or attempt, and giving themselves up to despair, I could not have acquitted myself to my own conscience and feelings had I deserted him at so critical a moment, and not taken the step I did, as he had no other person but me to depend on; that, with all deference, I thought there was no analogy between the situation of me and my client, and any advocate in England and his. As to the term “unhappy victim,” all I meant by it was—an unhappy man just about to suffer an ignominious death. The Chief Justice still

seemed to dwell on the expression "unhappy victim"; but Mr. Justice Chambers, I think, interposing, the matter ended there. I about the same time prepared two other petitions for a respite—the one from Nanda Kumar himself to the Judges, the other from Nanda Kumar to the Governor-General and Council, praying them to intercede with the Judges in his behalf. The original petition, intended to have been presented to the Governor-General and Council, I took charge of myself. I had at first intended to have transmitted it in a letter to the late Mr. Monson for his perusal, to know if it would be more agreeable to him to have it sent in to the Council or not. The original letter, in which I intended to have sent it to him, I now hold in my hand.

Reads it as follows:—

SIR,—I am so incessantly teased with applications from Maharaja Nanda Kumar's people respecting the petition to the Governor-General and Council, which they are for ever pressing to have preferred, that I take the liberty of sending it you enclosed, to beg the favour of you to give it a perusal, and just say whether or no you would rather wish to have it sent in to you in Council or not. If you should see no objections to its being sent in to Council, you will afterwards transmit it or not to the Judges, as under all circumstances you may think proper.

I am, Sir,

"Your most obliged
and obedient servant,

Tuesday, 1st August 1775.

THOS. FARRER.

Not made use of.—T. F.

Then Mr. Farrer said:—This letter was never sent. The reason was this: That I knew both General Clavering and Mr. Francis were to be at Mr. Monson's, I think the evening of that very day, as Lady A. M. was to receive company, and therefore I thought it would be better to lay it before them all three together—by all three I mean General Clavering, Mr. Monson, and Mr. Francis, when they should be met in the evening. They all being assembled, I called Mr. Francis aside, and explained the business to him first. He had no objection to it, but approved the measure. General Clavering and Mr. Monson were then called to us, and it was proposed by Mr. Francis and myself to them. The General without

hesitation peremptorily refused, assigning, as a reason, that it was a private transaction of Nanda Kumar's own; that it had no relation whatever to the public concerns of the country, which alone he, the General, was sent out to transact, and that he would not make any application in favour of a man who had been found guilty of forgery, nor, indeed, did he think it would do any good. Mr. Monson concurred with him, and therefore the matter dropped, and it was no further stirred in. I hold in my hand the original petition with the name and seal of Nanda Kumar thereto, together with the draft of a letter in my own handwriting, which I at the same time submitted to their consideration, in which I proposed that they should have conveyed the petition to the Judges.

Reads them as follows :—

To the Hon'ble (IMPEY AND BRETHREN).

SIRS,—We beg leave to enclose you the copy of a petition which has been delivered to us in Council on behalf of Maharaja Nanda Kumar Bahadur, now a convict under sentence of death in the gaol of Calcutta, for forgery. The reasons contained in such petition seem to us to have weight; and they, together with others of a political nature, which must, we presume, from the known rank and station of the petitioner both in public and private life, necessarily occur to Your Lordships, induce us to comply with the prayer of such petitioner, which we beg leave to do, by requesting Your Lordships, if the same can be done consistent with the due administration of public justice, to respite the execution of his sentence until the pleasure of His Majesty shall be known thereon, and to recommend him to His Majesty's mercy, upon the terms mentioned in such petition, or such others as to Your Lordships shall seem better suited to the nature of the case.

We request to be favoured with Your Lordships' answer. And have the honour to be, &c.

To the Hon'ble the GOVERNOR-GENERAL AND COUNCIL at Fort William in Bengal.

The humble petition of Maharaja
NANDA KUMAR, &c., :

SHEWEETH.—That your petitioner not only deeply affected with his present unhappy situation and the disgrace and misery which, by his native laws and religion, the execution of the sentence under

which he lays, must for ever reflect and entail on his innocent posterity, and at the same time sensible of the great wisdom and justice of the laws of Great Britain, which are so necessarily introduced and established in many parts of this province and continent, by the late charter of His Most Gracious Majesty the King of Great Britain, but also being advised, and so far as he can form any judgment thereof, convinced, of the due and impartial administration of the same, as well on your petitioner's late trial for the offence above-mentioned as on other occasions, but likewise knowing that the said Supreme Court are by the said charter, under and by virtue of which they preside, invested with a power of respiting the execution of any convict, where such Court shall see occasion for mercy, and being at the same time fully sensible of the weight which a recommendation from Your Honours to the Judges of the said Court must have towards obtaining such respite, with all proper deference and submission, begs leave to urge the following reasons for now intruding himself upon Your Honours, thus to supplicate for such your intercession and recommendation as aforesaid.

That your petitioner humbly begs leave to observe, it is a principle of natural justice, and also, as he is advised, of universal law, among all civilized nations and people, that punishments for every offence, especially such as spring from mere reasons of policy, be published to all who are subject to the same, and that they be held *in terrorem* over such offence, to prevent the commission of it, and fully evince and declare the enormity of it, by such means declaring that to be an offence, which an individual is supposed not to have known before. That, in the present case of your petitioner, the offence of which he stands convicted was, according to the prosecutor's own evidence at the trial, committed at least between six and seven years ago, and has during the whole or the greatest part of that time, been within the knowledge of such prosecutor (but of which offence your petitioner in the most solemn manner, upon the faith of his religion, and the hopes which he has of a blessed eternity, declares himself innocent). That a municipal law, calculated and made for the meidian of Great Britain and its native inhabitants, is now introduced into this country to make this offence punishable with death in a Hindu native of Bengal, at a period so very distant from that when the said crime is charged to have been committed, or allowing such law in strictness to have been before introduced

(which your petitioner is advised, and now believes might be the case as to offences committed within the town of Calcutta), yet your petitioner is advised, and humbly presumes it was not introduced with that degree of certainty and notoriety which all laws so highly penal ought to be.

That your petitioner is far from meaning to censure the same, but as the laws act on general principles, and as the best may sometimes of necessity adduce an hardship to an individual under particular circumstances, your petitioner humbly confiding in the application of such exception to his own case, but more in Your Honours' intercession on his behalf, and in the moderation and clemency of the Judges of the Supreme Court, humbly hopes he shall be found in the eyes of Your Honours and the said Judges, an object of recommendation to the Royal mercy, under the terms and condition hereinafter comprised, or such other as may be thought more expedient.

That your petitioner humbly begs further to represent, that however culpable he may seem in respect to the offence of which he stands convicted, yet that, being of the highest rank and distinction as a Brahman or religious person (and who, as such, would not by his own laws be punished with equal severity with persons of inferior degree), should the sentence be carried into execution, it would reflect perpetual infamy and disgrace, not only on all those of the same caste, but also on the most distant branches of the petitioner's family, insomuch that it might create the greatest disorder among those of an inferior caste not only so far as respects their religious ceremonies, but also be productive of many other very pernicious effects among the Hindu natives of this country.

That, for the above reasons, to which your petitioner, humbly and with all deference, begs leave to superadd those of his and his family's having been employed in, and discharged with fidelity and honour, offices of the first trust and consequence in these provinces or kingdoms, as well under the Mogul Government as that of the Hindu, and the English East India Company, his present very advanced stage of life (being near the age of seventy years);— and the further consideration that this appears, by the evidence given on his trial, to have been a transaction between native Hindus and not to have extended in any degree to the prejudice of any British subject or other European, your petitioner humbly

presumes to hope that, for those and such other reasons as to Your Honours in your great wisdom may occur, Your Honours will be pleased to solicit in your petitioner's behalf that the sentence of death may not be executed upon him, but that some other mode of punishment may be adopted by which he may expiate his offence.

Your petitioner, therefore, humbly presuming upon Your Honours' known humanity and goodness towards the distressed and wretched, etc. (Signed with a round seal apparently, for a circle is drawn (as in previous places) and in it is written "The signature and seal of Nanda Kumar." A. S. B.)



Then Mr. Farrer said :—There was another petition prepared similar to the one delivered in, addressed to the Judges ; the difference consisted only in the address, and in the formal parts consequent thereto, to the best of my belief. This petition to the Judges, Roy Radhachand, Nanda Kumar's son-in-law, took away from me, in order to present, and afterwards informed me he had presented it either to the Chief Justice in person, or left it at his house, I am not sure which. I have now also ready to produce, if the Committee think proper to receive them, two other petitions ; the one in the name of Sumbonot Roy, Nanda Kumar's brother (they called him so to me,* it was the first time I ever heard that Nanda Kumar had a brother), the other in the name of the inhabitants of Calcutta, Murshidabad and other places, but I believe they were neither of them adopted and carried into effect ; they were both, I think, brought or sent to me by Mr. Fowke. That in the name of Sumbonot Roy, I remember advising against ; the other, to the best of my remembrance, such of the inhabitants of Calcutta as wished to petition, to whom I had been told it had been shown, did not approve of.

* Sambhu Nath was Nanda Kumar's cousin. Natives call their cousins their brothers.

Reads it as follows :—

We, the inhabitants of etc. do consider the making known and declaring what is right and true as a great duty, and a very acceptable act to the Almighty, and the remaining silent and not declaring as far as we know of the truth as a great sin ; and do, on this account, make known to Lord Impey and the other gentlemen of the Court, that we have heard, and do believe that a false complaint has been made against Maharaja Nanda Kumar on the instigation of wicked people, his bitter enemies. Maharaja Nanda Kumar is a very great man in this country, and has discharged the greatest offices and is a well-wisher to the English nation. The greatest men have fallen a sacrifice to villains ; their high station, and the envy of unprincipled inferiors make them many enemies. This is the case with Maharaja. He neither is, nor ever has been, a servant of the Company or of any English gentlemen, but has nevertheless exerted his endeavours in such a manner for the service of the Company, that he is become an object of hatred to the embezzlers of the Company's wealth, and to those that are evilly disposed to the Company aforesaid ; who naturally from evil motives, and in defence of their own bad actions, seek every opportunity to injure the Maharaja, though without any just cause. Maharaja acted with so much integrity and uprightness in the King's service, that although he had the management of three subahs, and his enemies after his removal from office did, for a long time, studiously seek out instances of embezzlement committed by him, they could not prove any in the slightest degree against him. The late Subah Mir Jafar, who was best acquainted with the greatness of his abilities and unshaken loyalty, would never in his greatest distress, in the most dangerous times, confide in any other person. Maharaja served him in the highest employments of State, faithfully and with honour and success. Maharaja is a bold, undaunted man : these provinces will scarce ever know his equal. As the gentlemen of the Court of Justice are lately arrived in this country from Europe, we do, for their information, declare that Maharaja is utterly incapable of such unbecoming practices, and that he has never acted in any other manner but that which was conducive to the ease and welfare of the ryot and the advantage of the Company, and has never, as we believe, been guilty of fraud or forgery. Maharaja is near seventy years of age, beset on all

sides with enemies, and wholly ignorant of the English laws by which he has been tried, and been judged guilty and condemned by the gentlemen of the Court. The complaint brought against him is for a matter which happened upwards of six years ago. The witnesses who would fully have proved his innocence are during that time dead. Maharaja's case is very hard; his whole family and all their innocent offspring will, by the laws of his religion, be involved in his fate in case he suffers death. We, therefore, most humbly pray Your Lordships that Maharaja may be pardoned, so that he may not suffer death till his case has been made known to your King, the greatest and best of princes, whose fame for mercy, moderation and goodness, has been long known throughout these provinces.

Then Mr. Farrer said :—But I was informed and believe that a number of them, how many I cannot say, prepared another according to their own ideas, and presented it to the Chief Justice, but I never saw it. I have now closed my narrative.

To report progress, etc.

Mercurii, 20 die Februarii, 1788.

Mr. Farrer further examined :

Do you not know, or have you not heard, that Sir Elijah Impey applied to the pundits, and prevailed on them to visit Nanda Kumar whilst he was in prison, and what report did the pundits make thereupon ?

I do not know of my own knowledge anything upon the subject, but I have repeatedly heard, and do believe, without any doubt in my own mind, that Sir Elijah Impey did apply to the pundits, desiring them to inspect the prison and to see and report whether Nanda Kumar could, in his then situation, perform the ceremonies of his religion, or whether any suitable accommodation could be made to enable him so to do within the exterior wall of the prison, and that they reported that there might, and that there accordingly was a tent pitched on the flat roof of an outhouse within the walls, to which he might retire for the purpose of performing his ablutions and offering up his prayers; and for which purpose, I believe, he did retire thereto accordingly. I have frequently visited him in prison, and he never to me personally made any complaints on those heads, and I believe his mind was perfectly at ease on that subject.

Whether it was not rather irregular and out of the common course to apply to the Judges for a habeas corpus to bring a prisoner before them who was already in custody in the gaol of that Court?

It does not strike me as being at all irregular.

Whether the Judges had any power to have committed the prisoner to the New Fort?

I should conceive that, in the first instance, the Judges must necessarily commit him to the common gaol of the place. How far they might, under all the circumstances, have thought themselves authorized to have changed that place of confinement, was for them to judge, not me.

As you have stated a letter from Mr. Brix mentioning that Mr. Durham, on behalf of the prosecution, had undertaken to prosecute several of the witnesses for perjury at the instance of the Court, do you not also know that the jury had desired that those witnesses might be prosecuted?

I know nothing on this head but what appears in Mr. Brix's letter. I do not recollect ever having had any conversation with any person on the subject.

On what day was Nanda Kumar executed?

Either on the 5th or 6th of August 1775. I am not sure which.

Did you not hear read in what Sir Elijah Impey offered in his defence at the Bar of this House, a clause in a letter written from all the Judges to the Court of Directors, wherein, speaking of the credit and confidence which the Supreme Court of Judicature had obtained in the East Indies, it was said:—"The confidence necessarily arising from seeing that our judgments have, in every instance, been unanimous, whatever representations may be made to the contrary." Dated Fort William, 2nd August 1775. Signed by the four Judges.

I paid all the attention in my power to what Sir Elijah Impey said in his defence at the Bar of this House, and I think, though I cannot take upon myself to say with certainty, that he did read an extract from a letter to the effect mentioned in the question.

As you have stated, that it remains yet to be proved how far Sir Robert Chambers acquiesced in the proceedings against Nanda Kumar, you will be pleased to say whether you do not look on the letter before recited as to be a sufficient proof of such acquiescence?

How far that letter can be deemed an acquiescence or not, everyone

can judge for himself as well as me. For my part, I should think, that if Sir Robert Chambers has signed such a letter, that he must be deemed as having concurred.

On what day was Nanda Kumar convicted?

On 15th June, or rather on the 16th. The verdict was brought about 4 o'clock in the morning of the 16th, as I understood; for I had retired, before the verdict was given, from the Court.

Have you not been acquainted with other instances of the humanity and attention of Sir Elijah Impey to Nanda Kumar during his confinement?

I wish the question were more pointed. I never heard, to the best of my recollection, any complaint of the want of humanity in Sir Elijah Impey, or of any other of the Judges.

Have you not heard, or do you not know, that Sir Elijah Impey sent a gentleman of the faculty to Nanda Kumar in prison, to enquire after his health, and to see whether he wanted any medical assistance?

I cannot say with certainty; he very probably might.

Have you, in the course of your reading India papers, met with an affidavit made by Mr. Murchison and Yeandle, the gaoler?

No, I have not, to my remembrance. Odd as it may seem to this Committee, I declare upon my word that I never read or wrote a single word upon the subject of that trial, to the best of my remembrance, save such things as came before me when I had the honour of being a member of the Committee of this House in the last Parliament appointed to enquire into the state of judicature in Bengal, together with the printed trial of Nanda Kumar, which I never either read or saw, till subsequent to the motion being made in this House bringing forward the present charges; and also two numbers, entitled 12 and 13, which I bought at Almon's in Piccadilly, from which I have read partial extracts. I do not recollect the affidavits mentioned in the question to have ever come before me.

How long did you practise as an advocate of the Supreme Court in Calcutta?

From the time of its first institution towards the latter end of October 1774, till I quitted India, which was in the month of March or April 1778.

During the time of your practice, were capital convictions frequent in that Court?

No, certainly not. I did not attend the common course of business off the Session of *oyer and terminer*. I never was concerned in any other capital trial except one, in which several people were indicted, but for the same transaction.

Whether, to the best of your recollection, capital executions were frequent on convictions in the Court?

In the first place, I know of no other capital conviction but that of Nanda Kumar. I have a faint idea, however, of some other person being capitally convicted, but I had nothing to do with it; and I do not know or believe that there was any person executed during the time I was in India save Nanda Kumar.

Were you acquainted with the petition sent by Nanda Kumar to General Clavering to be presented to the Governor-General and Council on 4th August?

No, never, directly or indirectly.

Did you see that petition or a translation of it between the 4th and 14th August?

I never saw it at all.

In your cross-examination of Kamáladdin, on the trial of Nanda Kumar, and in the paper of remarks given by you to the Chief Justice before his summing up, did you observe the improbability of Nanda Kumar confessing a circumstance to Kamáladdin that would endanger his life?

I must beg leave to refer to the printed trial. I believe my remarks are there faithfully set forth. At this distance of time I cannot pretend to speak to particulars of that minute kind. I believe that my remarks, which were given by me to the Chief Justice, on his summing up the evidence, are faithfully set forth to the best of my remembrance.

Do you apprehend that Nanda Kumar himself supposed forgery to be a capital offence?—I must submit the propriety of my answering that question.

The question repeated.—I cannot possibly answer that question. I know nothing about it.

Explain to the Committee what use you meant to make of your argument, or how Nanda Kumar knew he had endangered his life unless he knew forgery to be a capital offence?

Provided the offence he had committed was by law a capital offence, whether Nanda Kumar knew it or did not know it to be so I conceive

to be very much out of the question. I, as his advocate, would certainly state anything I could in the strongest light for him.

Then reference being made to fol. 10 of the printed trial of Nanda Kumar, Mr. Farrer was asked: Did the Court caution you against admitting the receipt of a letter, as it might be prejudicial to the prisoner?—This part of the printed trial is to me quite unintelligible. I am stated to have offered to admit that Nanda Kumar had the letter. There is no evidence stated of any letter having been wrote to him.

Then Mr. Farrer read the extract from the printed trial of Nanda Kumar, page 10, as follows:

“Counsel for prisoner.—I admit the Maharaja had the letter.

Counsel for Crown.—Read the letter.

Court.—Go through with your evidence.

Counsel for Crown.—The letter does not say the seal was received, but it acknowledges the receipt of the letter, and the seal enclosed in the letter.

Court to prisoner's counsel.—Do you see the consequence? Do you mean to admit it?

Counsel.—I have duly weighed what Your Lordship said, and therefore will not admit it.”

All that part I do not understand; there is certainly some omission or mistake in the printed trial, but at the same time I have a recollection of some caution from the Court of that nature, but cannot particularize it; I think it was from Sir E. Impey.

Then reference being made to Nobokissen's evidence in fol. 27 of the printed trial of Nanda Kumar, Mr. Farrer was asked: Did the Court on Nanda Kumar's offering himself to put a question to Nobokissen advise him first to refer to his counsel?—Yes; I think that is true. I knew Nobokissen, and therefore paid particular attention, so that I can take upon myself to say I remember that.

Did Nobokissen say, as is stated in the printed trial, “Maharaja Nanda Kumar had better not ask me that question,” on overhearing what it was proposed to ask him?—I think he did, and I think he spoke in English, which he speaks very well.

Did Sir E. Impey or either of the other Judges remark to the jury that they were to receive no prejudice against the prisoner from Nobokissen's observation, as that was not evidence?

Yes; to the best of my remembrance they did. I think Sir E. Impey personally, as well as my memory serves me.

Then reference being made to fol. 92 of the printed trial of Nanda Kumar, Mr. Farrer was asked: Did Sir E. Impey or either of the other Judges suggest to you your power of calling Ramnath and Balgovind (though not called by the prosecutor), as their names were on the back of the indictment?—Yes; certainly they did. Sir E. Impey, I think, personally did. I was very well apprized of that, and meant to call them, as my instructions were, as well as I recollect, that the prosecutor's reason for not having called them was that they had one or both of them been concerned in improper attempts to obtain evidence.

Then reference being made to fol. 16 of the printed trial of Nanda Kumar, Mr. Farrer was asked: Did Sir E. Impey or either of the Judges direct that the books of Ballaki Das (though not examined by the prosecution) should be retained in Court for the use of the prisoner, without any suggestion to that purpose from his counsel?—I really find no traces in my memory on this head.

Did the Court object to the copy (fol. 34 and 35, printed trial) of Ballaki Das' will, as not being evidence, before any objection was taken by the prisoner's counsel?—I really do not recollect.

Then reference being made to fol. 81 of the printed trial, Mr. Farrer was asked: Did the Chief Justice, in favour of the prisoner, admit parol evidence to be submitted to the jury of the contents of an account given to Ballaki Das' widow, and overruled Mr. J. LeMaistre's objection to its being produced?—To the best of my recollection, something to that effect passed, but I cannot charge my memory with particulars.

Then reference being made to fol. 107 of the printed trial, Mr. Farrer was asked: Did Sir E. Impey or either of the Judges desire Nanda Kumar to consult with his counsel on the propriety of examining Kissen Juan Das respecting the coronerma?—I perfectly remember that Nanda Kumar desired Kissen Juan Das, after he had finished his examination, might be called back, for that he had a question himself to ask him; that the Chief Justice personally desired he might consult his counsel to see whether the question was proper or not, and that I myself answered, having spoke with Nanda Kumar before, that I believed it was not impro-

per or to that effect; but I do not know that it respected particularly the coroners, only general.

Do you now think that the question persevered in by Nanda Kumar, after the suggestion from the Bench, contributed very materially to his conviction?—From what appears to have been said by the Chief Justice in his summing up, it certainly appears very much that it must have had that consequence: but what might operate on the minds of the jury it is impossible for me to say.

Was Nanda Kumar at large at the time of the indictment preferred against him?—He was apprehended on the 6th May, and the indictment preferred the 7th June.

Was he apprehended on the charge of forgery?—He was a prisoner on the charge of forgery.

Whether, when Nanda Kumar was apprehended, he was an inhabitant of Calcutta?—I never was at his house; but I always understood him to be.

What did the drift of the observation made by the Judge upon your tender of a plea to the jurisdiction appear to you to be?—To point out clearly to me that the plea was not tenable; and that, therefore, if I could, I might make it so. I can conceive no other drift.

Was there any suggestion from the Court, or from Sir E. Impey in particular, that if the plea to the jurisdiction was overruled, the prisoner would not have been permitted to plead over to the indictment?

I have already stated as fully as is in my power all I have to say on that subject, and I beg leave to refer to that.

NOTE.—I received a copy of Mr. Farrer's evidence from my wife after I had finished my book. The evidence is very long, but is so important that I give it in full. No doubt some of it is in favour of Impey, and I am quite willing that he should have the benefit of this.

I am unable to refer to all the important points in it, nor is it necessary that I should. I would, however, call the attention of my readers to the following points:—

1st.—That Fowke and Farrer tried to have the conspiracy cases brought on first, and that the Court would give them no help in the matter.

2nd.—That Mr. J. Stewart was foreman of the Grand Jury, and that Elliot interpreted to the Grand Jury.

3rd.—The written plea to the jurisdiction put in by Farrer.

4th.—That Farrer did not believe that Sir Robert Chambers ever acquiesced in the decision about the applicability of the statute.

5th.—That Nanda Kumar claimed to be tried by God and his peers according to the laws to which he was amenable at the time of the supposed fact.

6th.—That the Court cut Mr. Farrer's arguments short, and called upon him peremptorily to plead; LeMaistre, J., adding, to the best of Mr. Farrer's recollection, under pain of being considered as standing mute.

7th.—That the objection to Elliot's interpreting was made by the particular directions of Nanda Kumar, which shows that he knew who his enemies were. Farrer gave his reasons for the objection, but they were expunged from the minutes.

8th.—That Chambers, even at the very last, i.e., on the 23rd or 24th June, when final sentence was passed, expressed his doubts about the indictment.

9th.—That Mr. Farrer nowhere admits that the printed report of the trial was accurate, and that he stated that the part about Nanda Kumar's letter was quite unintelligible to him.

10th.—That Messrs. Farrer and Brix's chief reason for abandoning the plea to the jurisdiction was the Court's having so strongly intimated an opinion that, if it was not withdrawn but left to be decided against the prisoner, he would not afterwards be allowed to plead not guilty. Thus it appears that the Court was prepared to pass what Sir J. Stephen admits would have been a monstrous judgment and such as would have justified almost anything that could be said of the Court. (I, 221.)

ADDENDA.

1st.—The following is a copy of the letter addressed by Bolaqi to Vansittart, from which I infer that the deposit of jewellery with Bolaqi was not an extraordinary thing. It is No. 81 of Appendix to one of the Commons' Reports of 1772.

It is necessary to explain that Bolaqi had furnished evidence against Vansittart to Clive by admitting that he had paid Vansittart five lakhs of rupis. In the present letter he explains the circumstances under which he made the admission:—

"You are well acquainted with my situation. Lately Lord Clive sent for me and said the Nawab Qasim Ali Khan gave Mr. Vansittart five lakhs of rupis through your hands—is it not true? I answered, 'it is true.' But in the amount was a bill for the expenses of Mr. Ellis, the Chief of Patna, and there was likewise the price of the jewels deposited by the Nawab Jafar Ali Khan. This was the fact of the matter. Lord Clive then said: 'Write and give me a declaration under your hand of five lakhs of rupis'; so, being without remedy, I wrote it conformably to his order, and gave it him, and I have sent you herewith an exact copy for your perusal. As you are my only friend and protector, I thought fit to acquaint you with the matter."

20th Sewan, 8th year of the Reign (July 1767).

2nd.—Some curious facts are to be found in the depositions of the witnesses examined before the Select Committee of the House of Commons in 1772, *vide* Third Report of the Select Committee. Thus, Mr. Francis Sykes, being asked if forgery was a capital crime in India, answered: "I do not know the law on that subject, but I never knew anyone capitally punished for it." The same witness mentions the startling fact that Naba Krishna, the subsequent Maharaja, had long been in the service of Nanda Kumar.

Another witness, Ganesham Das, being asked what was the punishment for forgery in India, answered: "The right hand to be cut off." Question—Do you know of any instance of a hand being cut off for that offence? Answer—"No, I have heard of such punishment being inflicted for that offence." Before the Committee there was a question if a letter of the Nawab, in which Nanda Kumar's name

appeared) was genuine, and in connection with this subject the Committee asked Ganesham Das if he thought Nanda Kumar would come to England. His answer was : "Without force he cannot come, because it is contrary to the laws of his religion, he being a Brahman. It is contrary to the religion of the Hindus to come to England, the consequence would be their losing their caste; but by paying money, and doing penance at their return, they would regain it. I am a Hindu."

Yet the Judges treated Nanda Kumar's representations about loss of caste from confinement in the common jail as dishonest subterfuges.* Ganesham Das, was Persian translator to Colonel Graham.

I do not know under what circumstances he went home, but we find him returning to Bengal in 1774 with the Judges as Munshi or Persian Secretary. Bolts, II, 182, has a note, in which he mentions as an instance of the tyranny of the menial servants of the English, that when Sir Thomas Rumbold was Chief of Patna, his khansamah, or butler, held a court, and inflicted a severe flagellation on Ganesham for quarrelling with one of the khansamah's comrades. Ganesham attached himself to Sir Elijah Impey, and became his munshi. His name occurs several times in the reports of the trials, &c., and he accompanied Sir Elijah to Lucknow. Mr. Impey writes of him in his Memoirs (p. 237, note), as one of the most faithful and affectionate of Indians, and says that he became a sincere and intelligent convert to Christianity. If this munshi did not know that forgery was capital crime anywhere in India, could Nanda Kumar be expected to be better informed? I can find no authority for Mr. Impey's statement that Barwell had presided in Court when natives had been condemned to death for forgery, and that the sentences had been carried out.—(Memoirs, p. 49, note.)

A Captain Swinton was examined as being an expert in the matter of Persian letters. He deposed that he had examined 50 letters

* Mr. Impey and Sir J. Stephen lay stress upon the affidavit of Yeandle, the Jailor, that Nanda Kumar might have had sweetmeats secretly conveyed to him, &c. But they forget that this affidavit was made in January 1776, and that on 9th May 1775, that is, on the 4th day of the imprisonment, Yeandle stated, in answer to a question by Francis, that he believed it to be true that Nanda Kumar had received no sustenance since his admission into jail.

received by Lord Clive in the course of a month from the King, Suja-ad-Daula, Mahomed Raza Khan, and others, and that he had found only three of them to have any signature, *viz.*, "one from the King with a mark called Baiz, one from Saif-ad-Daula marked Vus-salam (wā lasalam), which means farewell according to Meninski ; it also means *ne plus ultra* ; and one from Suja-ad-Daula with the mark of el Hauk, (?) which means stop. Six of them were not addressed, perhaps owing to their having been sent in bags (kharitas). Of the fifty letters which I examined, six were dated on the outside of the cover. None of them were dated on the letter itself."

The same witness deposed that the reading of Persian was a matter of difficulty with him. Similarly Mr. Henry Strachey deposed that he could not read the Persian language. If these gentlemen, one of whom at least was an expert, could not make out a Persian letter, is it likely that Sir Elijah Impey could have read the Persian affidavits tendered to him at Lucknow ? Is Sir James Stephen not aware that hardly any of the Haileybury civilians could read a vernacular paper, either in Persian or in Bengali, and that the accomplishment is by no means common among the competition men ? Even natives unconnected with the Courts find much difficulty in reading the *shikast* used in writing Persian petitions, and this is one great reason why legal documents should be written in the Roman character. "

3rd.—The Sair Matakhirin was partly translated by Major Jonathan Scott in the second volume of his History of the Deccan. The following is his rendering of the difficult passage about Nanda Kumar's character :— He (Nanda Kumar) was a wicked, deceitful, vainglorious person, inimical to all mankind, even to those who had conferred obligations upon him, and if any one trivially offended him, never rested till he had effected his ruin. As his friends had assured him that no one could do him injury, and told him not to be alarmed, though he might be led to the foot of the gallows, so that he might securely use every means to prove the Governor's delinquencies, he, from his hatred and confidence in the General's promises, continued to accuse him ; but Mr. Hastings refuted all his allegations." If this translation be correct, then Gholam Husain does not give him credit for even one good quality. (Stephens, I, 42.)

4th.—It is always a pleasure to be able to vindicate the accuracy of Lord Macaulay, and I am glad to think that this book of mine may

help to show that Macaulay was substantially right in his view of the Nanda Kumar case. As Buckle well says, Macaulay's "qualities will long survive the aspersions of his puny detractors, men, who in point of knowledge and ability, are unworthy to loosen the shoelatchet of him they foolishly attack." But it seems to me that Macaulay has sometimes been worse served by his friends than by his enemies; by those persons, for instance, who profess to admire his genius, but who say that he was led away by the traditional Whig hatred of Impey, and that he did not know the effect of his own language. I cannot but think that Macaulay would have preferred attack from open foes to having such humiliating excuses made for him. I think he would have remembered his own terrible words where, in speaking of some wretched women, he says that their love was more dangerous than their hate. The quotation which I just made from Major Scott shows that Macaulay might have got from his book the passage about the foot of the gallows. Sir J. Stephen, I, 267, remarks that Macaulay got his assertion that Clavering was said to have sworn that, even at the foot of the gallows, Nanda Kumar should be rescued from the Sair Matakhirin, and then he adds: "It happens, however, to be the very opposite of the truth, for Clavering did most distinctly swear that he never had any intention to rescue Nanda Kumar at all." For a lawyer, Sir James has made a curious slip here. In his eagerness to prove Macaulay wrong, he has forgotten that Macaulay only says that there was a rumour that Clavering had made such a statement. Now this is perfectly true, and poor Mr. Impey, after writing that he had nearly blinded himself in vainly trying to find where Macaulay got his authority for the statement, admits further on, p. 308, that Elliot and Durham swore that it was an opinion prevalent among the natives that the Raja would be released by General Clavering or the Council. It is only the fact of the *rumour* that Macaulay refers to, and Sir Elijah Impey and his friends never denied that there was such a rumour.* On the contrary, Impey

* Weandle, the Jailer, also made an affidavit that even to the day before his execution, Nanda Kumar expected his enlargement through the influence of Clavering and Monson.

Sir J. Stephen forgets too that Clavering's denial was made on the 16th May 1772, and so is no refutation of the foot of the gallows' story, as the execution did not take place till August.

quoted Elliot and Durham's affidavits in the House to show that the natives believed that Nanda Kumar would be released by some Members of Council. I should have thought that the very fact of Clavering's thinking it necessary to make an affidavit about the matter was excellent evidence of the existence of the rumour. Men do not make affidavits of this kind if there is nothing to deny.

5th.—It is a curious instance of Hastings' real or affected ignorance about Kanta Babu's position that he actually asked him if he was a Brahman (*vide* Bengal Appendix). It seems hardly possible that Hastings could have been ignorant that Kanta was a Tili (oilman) by caste.



